



भारत का राजपत्र

The Gazette of India

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

साप्ताहिक

WEEKLY

सं. 33।
No. 33।

नई दिल्ली, अगस्त 12—अगस्त 18, 2012, शनिवार/श्रावण 21—श्रावण 27, 1934
NEW DELHI, AUGUST 12—AUGUST 18, 2012, SATURDAY/SHIRAVANA 21—SHRAVANA 27, 1934

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सार्विधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 6 अगस्त, 2012

का. आ. 2601.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खण्ड (ष) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, भारतीय रिजर्व बैंक के परामर्श से, एतद्वारा, डॉ. राजीव कुमार (जन्म तिथि 6-7-1951) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक के केंद्रीय निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के रूप में पुनर्नियुक्त करती है।

[फा. सं. 3/1/2011-बीओ-1]

विजय मल्होत्रा, अवर सचिव

MINISTRY OF FINANCE
(Department of Financial Services)

New Delhi, the 6th August, 2012

S. O. 2601.—In exercise of the powers conferred by clause (d) of Section 19 of the State Bank of India Act, 1955 (23 of 1955), the Central Government in consultation with Reserve Bank of India, hereby re-appoints Dr. Rajiv Kumar (DoB : 6-7-1951) as a part-time non-official director

on the Central Board of Directors of State Bank of India, for a period of three years, with effect from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 3/1/2011-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 7 अगस्त, 2012

का.आ. 2602.—भारतीय रिजर्व बैंक अधिनियम, 1934, (1934 का 2) की धारा 8 की उप-धारा (1) के खण्ड (ष) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, एतद्वारा, वित्त मंत्रालय, आर्थिक कार्य विभाग के सचिव श्री अर्विद मायराम को तत्काल प्रभाव से और अगले आदेश होने तक, श्री आर. गोपालन के स्थान पर भारतीय रिजर्व बैंक के केंद्रीय बोर्ड में निदेशक के रूप में नामित करती है।

[फा. सं. 6/3/2012-बीओ-1]

श्रेया गुहा, निदेशक

New Delhi, the 7th August, 2012

S. O. 2602.—In exercise of the powers conferred by clause (d) of sub-section (1) of Section 8 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby nominates Shri Arvind Mayaram, Secretary, Department of Economic Affairs, Ministry of Finance, to be a director on the Central Board of Directors of Reserve

Bank of India with immediate effect and until further orders
vice Shri R. Gopalan.

[F. No. 6/3/2012-BO-I]
SREYA GUHA, Director

सांख्यिकी और कार्यक्रम कार्यान्वयन मंत्रालय

नई दिल्ली, 13 अगस्त, 2012

का. आ. 2603.—राष्ट्रपति, केन्द्रीय सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियमावली, 1965 के नियम 24 का उप-नियम (1) और नियम 12 का उप-नियम (2) के खंड (ख) और नियम 9 का उप-नियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार, मंत्रिमंडल सचिवालय की अधिसूचना सं. का.नि.आ. 633 तारीख 28 फरवरी, 1957 को जहां तक उसका संबंध राष्ट्रीय नमूना सर्वेक्षण निदेशालय से है को उन बातों के सिवाय जिन्हें ऐसे अधिक्रमण से पहले किया गया है या करने का लोप किया गया है, अधिक्रांत करते हुए निर्देश देती है कि:-

- (1) इस अधिसूचना की अनुसूची के भाग-I स्तंभ (1) में विहित साधारण केन्द्रीय सेवा समूह 'ख' पदों के बाबत इसके पश्चात् उक्त अनुसूची कही जायेगी, उक्त अनुसूची के स्तंभ (2) में विहित प्राधिकारी नियुक्ति प्राधिकारी होगा, उक्त अनुसूची के स्तंभ (3) में विहित प्राधिकारी अनुशासनिक प्राधिकारी होगा और उक्त अनुसूची के स्तंभ (5) में विहित प्राधिकारी उक्त अनुसूची के स्तंभ (4) में विहित शास्ति के संबंध में अपीलीय प्राधिकारी होगा;
- (2) उक्त अनुसूची के भाग-II स्तंभ (1) में विहित साधारण केन्द्रीय सेवा समूह 'ग' के पदों के बाबत उक्त अनुसूची के स्तंभ (2) में विहित प्राधिकारी नियुक्ति प्राधिकारी होगा, उक्त अनुसूची के स्तंभ (3) में विहित प्राधिकारी अनुशासनिक प्राधिकारी होगा और उक्त अनुसूची के स्तंभ (5) में विहित प्राधिकारी उक्त अनुसूची के स्तंभ (4) में विहित शास्ति के संबंध में अपीलीय प्राधिकारी होगा।

अनुसूची

भाग 1-साधारण केन्द्रीय सेवा समूह 'ख'

पद का वर्णन	नियुक्ति प्राधिकारी	शास्ति अधिरोपित करने के लिए सक्षम प्राधिकारी और शास्तियां जो केन्द्रीय सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियमावली, 1965 में नियम 11 के संख्यांकों के मद के संदर्भ में अधिरोपित की जा सकती	अपीलीय प्राधिकारी	
(1)	(2)	(3)	(4)	(5)

राष्ट्रीय प्रतिदर्श सर्वेक्षण कार्यालय

1. क्षेत्र संकार्य प्रभाग

समूह 'ख' पद अपर महानिदेशक सिवाय उन पदों के जो अधीनस्थ सांख्यिकी सेवा में शामिल हैं।	अपर महानिदेशक	सभी	महानिदेशक और मुख्य कार्यकारी अधिकारी, राष्ट्रीय प्रतिदर्श सर्वेक्षण कार्यालय
---	---------------	-----	--

2. समंक विधायन प्रभाग

समूह 'ख' पद अपर महानिदेशक	अपर महानिदेशक	सभी	महानिदेशक और मुख्य कार्यकारी अधिकारी राष्ट्रीय प्रतिदर्श सर्वेक्षण कार्यालय
---------------------------	---------------	-----	---

3. सर्वेक्षण अभिकल्प एवं अनुसंधान प्रभाग

समूह 'ख' पद अपर महानिदेशक	अपर महानिदेशक	सभी	महानिदेशक और मुख्य कार्यकारी अधिकारी राष्ट्रीय प्रतिदर्श सर्वेक्षण कार्यालय
---------------------------	---------------	-----	---

भाग II—साधारण केन्द्रीय सेवा समूह 'ग'

पद का वर्णन	नियुक्ति प्राधिकारी	शास्ति अधिरोपित करने के लिए सक्षम प्राधिकारी और शास्तियां जो केन्द्रीय सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियमावली, 1965 में निम्न 11 के संख्यांकों के मद के संदर्भ में अधिरोपित की जा सकेंगी	अपीलीय प्राधिकारी
(1)	(2)	(3)	(4)
	प्राधिकारी	शास्ति	(5)

राष्ट्रीय प्रतिदर्श सर्वेक्षण कार्यालय

1. क्षेत्र संकार्य प्रभाग

(क) मुख्यालय के पदों के बाबत

समूह 'ग' पद	उप महानिदेशक (प्रशासन)	उप महानिदेशक (प्रशासन)	सभी	अपर महानिदेशक
-------------	---------------------------	---------------------------	-----	---------------

(ख) क्षेत्र कार्यालय के पदों के बाबत

समूह 'ग' पद	उप महानिदेशक (राज्य राजधानी क्षेत्रीय कार्यालय)	उप महानिदेशक (राज्य राजधानी क्षेत्रीय कार्यालय)	सभी	अपर महानिदेशक
-------------	--	--	-----	---------------

2. समंक विधायन प्रभाग

(क) मुख्यालय के पदों के बाबत

समूह 'ग' पद	उप महानिदेशक	उप महानिदेशक	सभी	अपर महानिदेशक
-------------	--------------	--------------	-----	---------------

(ख) समंक विधायन केन्द्र के पदों के बाबत

समूह 'ग' पद	उप महानिदेशक	उप महानिदेशक	सभी	अपर महानिदेशक
-------------	--------------	--------------	-----	---------------

3. सर्वेक्षण अभिकल्प एवं अनुसंधान प्रभाग

समूह 'ग' पद	उप महानिदेशक	उप महानिदेशक	सभी	अपर महानिदेशक
-------------	--------------	--------------	-----	---------------

[फा. सं. ए-12034/1/2008-प्रशा. III]

एस. के. राय, अवर सचिव

MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION

New Delhi, the 13th August, 2012

S.O. 2603.—In exercise of powers conferred by sub-rule (2) of the rule 9, clause (b) of sub-rule (2) of rule 12 and sub-rule (1) of rule 24 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and in supersession of the notification of the Government of India, Cabinet Secretariat number S.R.O. 633, dated the 28th February, 1957, in so far as it relates to Directorate of National Sample Survey, except as respects things done or omitted to be done before such supersession, the President hereby directs that :—

(1) In respect of the posts in the General Central Service Group 'B' specified in column (1) of Part I of the Schedule to this order hereinafter referred to as the said Schedule, the authority specified in column (2) of the said Schedule shall be the Appointing Authority, the authority specified in column (3) of the said Schedule shall be the Disciplinary Authority and the authority specified in column (5) of the said Schedule shall be the Appellate Authority in regard to the penalties specified in column (4) of the said Schedule ;

(2) In respect of the posts in the General Central Service Group 'C', specified in column (1) of Part II of the said Schedule, the authority specified in column (2) of the said Schedule shall be the Appointing Authority, the authority specified in column (3) of the said Schedule shall be the Disciplinary Authority and the authority specified in column (5) of the said Schedule shall be the Appellate Authority in regard to the penalties specified in column (4) of the said Schedule.

SCHEDULE**Part-I—General Central Service Group ‘B’**

Description of post	Appointing Authority	Authority competent to impose penalties and penalties which it may impose (with reference to item numbers in rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.)		Appellate Authority
(1)	(2)	(3)	(4)	(5)
National Sample Survey Office				
1. Field Operations Division				
Group ‘B’ posts except the posts included in the Subordinate Statistical Service	Additional Director General	Additional Director General	All	Director General and Chief Executive Officer, National Sample Survey Office
		Deputy Director General (Administration)	(i) to (iv)	Additional Director General

Group ‘B’ posts	Additional Director General	Additional Director General	All	Director General and Chief Executive Officer, National Sample Survey Office
(1)	(2)	(3)	(4)	(5)
2. Data Processing Division				

Group ‘B’ posts	Additional Director General	Additional Director General	All	Director General and Chief Executive Officer, National Sample Survey Office
(1)	(2)	(3)	(4)	(5)
3. Survey Designs and Research Division				

Part II—General Central Service Group ‘C’

Description of posts	Appointing Authority	Authority competent to impose penalties and penalties which it may impose (with reference to item numbers in rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.)		Appellate Authority
(1)	(2)	(3)	(4)	(5)
National Sample Survey Office				
1. Field Operations Division				

Group ‘C’ posts	Deputy Director General (Administration)	Deputy Director General (Administration)	All	Additional Director General
(1)	(2)	(3)	(4)	(5)
(a) In respect of posts at Headquarters				

(b) In respect of posts in Field Offices

Group 'C' posts	Deputy Director General (State Capital Regional Offices)	Deputy Director General (State Capital Regional Offices)	All	Additional Director General
-----------------	--	--	-----	-----------------------------

2. Data Processing Division

(a) In respect of posts at Headquarter

Group 'C' posts	Deputy Director General	Deputy Director General	All	Additional Director General
-----------------	-------------------------	-------------------------	-----	-----------------------------

(b) In respect of posts in Data Processing Centres

Group 'C' posts	Deputy Director General	Deputy Director General	All	Additional Director General
-----------------	-------------------------	-------------------------	-----	-----------------------------

3. Survey Designs and Research Division

Group 'C' posts	Deputy Director General	Deputy Director General	All	Additional Director General
-----------------	-------------------------	-------------------------	-----	-----------------------------

[F. No. A-12034/1/2008-Admn. III]

S. K. ROY, Under Secy.

नागर विमानन मंत्रालय

(एएआई अनुभाग)

नई दिल्ली, 6 अगस्त, 2012

का. आ. 2604.—केन्द्रीय सरकार भारतीय विमानपत्रन प्राधिकरण अधिनियम, 1994 (1994 का संख्यांक 55) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एवं द्वारा श्री एस. सुरेश, कार्यपालक निदेशक, भारतीय विमानपत्रन प्राधिकरण को 75,000-1,00,000 रु. (पुनरीक्षित) वेतनमान में 1 अगस्त, 2012 के पूर्वाहन से पांच वर्ष की अवधि या उनकी अधिवर्षिता की तारीख तक या अगले आदेशों के होने तक, जो भी पहले हो, के लिए सदस्य (वित), भारतीय विमानपत्रन प्राधिकरण के रूप में नियुक्त करती है।

[सं. एवी. 24011/3/2011-एएआई]

सैयद इमरान अहमद, अवर सचिव

MINISTRY OF CIVIL AVIATION

(AAI SECTION)

New Delhi, the 6th August, 2012

S.O. 2604.—In exercise of the powers conferred by Section 3 of the Airports Authority of India Act, 1994 (No. 55 of 1994), the Central Government hereby appoint Shri S. Suresh, Executive Director, AAI as Member (Finance), Airports Authority of India in the scale of pay of Rs. 75,000-1,00,000 (revised) with effect from forenoon of 1st August, 2012 for a period of five years or till the date of his superannuation or until further orders, whichever is the earliest.

[No. AV. 24011/3/2011-AAI]

SYED IMRAN AHMED, Under Secy.

संचार और सूचना प्रौद्योगिकी मंत्रालय

(दूरसंचार विभाग)

(राजभाषा प्रभाग)

नई दिल्ली, 3 अगस्त, 2012

का.आ. 2605.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा-संशोधित 1987) के नियम 10(4) के अनुसरण में संचार और सूचना प्रौद्योगिकी मंत्रालय, दूरसंचार विभाग के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालय जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित किया जाता है।

- कार्यालय नियंत्रक संचार लेखा, उत्तराखण्ड परिमण्डल, 56 सुभाष रोड, देहरादून-248001, उत्तराखण्ड।

[सं. इ. 11016/1/2009-रा.भा.]

भारत भूषण कौरा, संयुक्त सचिव

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Telecommunications)

(OFFICIAL LANGUAGE DIVISION)

New Delhi, the 3rd August, 2012

S. O. 2605.—In pursuance of rule 10(4) of the Official Language (use for official purpose of the Union), Rules, 1976 the Central Government hereby notifies following office under the administrative control of Ministry of Communications and I.T. Department of Tetecommunications where of more than 80% staff have acquired working knowledge of Hindi.

- Office of the Controller Communications Accounts, Uttarakhand Circle, 56- Subhash Road, Dehradun, Uttarakhand.

[No. E. 11016/1/2009-O.L.]

BHARAT BHUSHAN KAURA, Jt. Secy.

प्रानव संसाधन विकास मंत्रालय

(स्कूल शिक्षा और साक्षरता विभाग)

(एनएलएम-IV अनुभाग)

नई दिल्ली, 16 अगस्त, 2012

का.आ. 2606.—दिनांक 31-5-2010 की भारत सरकार की अधिसूचना सं. एफ. 46-3/2008/एई-4/एनएलएम-4 द्वारा गठित राष्ट्रीय साक्षरता मिशन प्राधिकरण (एनएलएमए), की कार्यकारी समिति का कार्यकाल 31-5-2013 तक बढ़ाया जाता है।

[सं. एफ. 46-3/2008-एई-4/एनएलएम-4]

जगमोहन सिंह राजू, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of School Education and Literacy)

(NLM-IV SECTION)

New Delhi, the 16th August, 2012

S. O. 2606.—The term of the Executive Committee of the National Literacy Mission Authority (NLMA), constituted vide Government of India's Notification No. F. 46-3/2008/AE-4/NLM-4 dated 31-5-2010, is extended till 31-5-2013.

[No. F. 46-3/2008-AE-4/NLM-4]

JAGMOHAN SINGH RAJU, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 31 जुलाई, 2012

का.आ. 2607.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों का विवरण नीचे अनुसूची में दिया गया है वे स्थापित हो गये हैं:—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शोर्धक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस/आई ई सी 60371-2: 2004 अध्रक आधारित उष्मारोधी सामग्री की विशिष्टि : भाग 2: परीक्षण पद्धतियाँ	आई एस 9299 (भाग 2) : 1992	31-7-2012
2.	आई एस/आई ई सी 60371-3-2: 2005 अध्रक आधारित उष्मारोधी सामग्री की विशिष्टि : भाग 3 एकल सामग्री की विशिष्टियाँ - अनुभाग 2 अध्रक पेपर	आई एस 9299 (भाग 3/अनुभाग 7): 1992	31-7-2012
3.	आई एस/आई ई सी 60371-3-3: 1983 अध्रक आधारित उष्मारोधी सामग्री की विशिष्टि : भाग 3 एकल सामग्री की विशिष्टियाँ - अनुभाग 3 तापीय उपस्कर के लिए दृढ़ अध्रक सामग्री की विशिष्टि	आई एस 9299 (भाग 3/अनुभाग 4): 1982	31-7-2012
4.	आई एस/आई ई सी 60371-3-5: 2005 अध्रक आधारित उष्मारोधी सामग्री की विशिष्टि : भाग 3 एकल सामग्री की विशिष्टियाँ - अनुभाग 5 पोस्ट - इम्परिगेशन (वी पी आई) के लिए ऐपाक्सी रेजिन बाइंडर सहित कॉच पृष्ठित अध्रक पेपर	आई एस 9299 (भाग 3/अनुभाग 3): 1982 आई एस 9299 (भाग 3/अनुभाग 5): 1992	31-7-2012
5.	आई एस/आई ई सी 60371-3-9: 1995 अध्रक आधारित उष्मारोधी सामग्री की विशिष्टि : भाग 3 एकल सामग्री की विशिष्टियाँ - अनुभाग 9 : संचकन माइक्रोवेव	आई एस 9299 (भाग 3/अनुभाग 9): 1995	31-7-2012

इन भारतीय मानकों की एक प्रति भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चैन्सी, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ 02/टी-39, टी-64, टी-71, टी-116, टी-179]

आर. के. त्रेहन, वैज्ञानिक 'ई' एवं प्रमुख (विद्युत तकनीकी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 31st July, 2012

S. O. 2607.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, it is, hereby notified that these Indian Standards, Particulars of which are mentioned in the Schedule give hereafter, have been cancelled and stand withdrawn.

SCHEDULE

Sl. No.	No. and Year of the Indian Standards	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS/IEC 60371-2:2004 Specification for insulating materials based on mica- Part 2: Method of test	IS 9299 (Part 2) : 1992 Insulating materials based on built-up mica or treated mica paper: Part 2 Methods of test (first revision)	31-7-2012
2.	IS/IEC 60371-3:2005 Specification for insulating materials based on mica-	IS 9299 (Part 3/Sec. 7) : 1992 Insulating materials based on built-up mica or treated mica paper:	31-7-2012

(1)	(2)	(3)	(4)
	Part 3: Specifications for individual materials Section 2 Mica paper	Part 3 Specification for individual material, Section 7 Mica paper	
3.	IS/IEC 60371-3-3:1983 Specification for insulating materials based on mica- Part 3: Specifications for individual materials Section 3 Specification for rigid Mica materials for heating equipment	IS 9299 (Part 3/Sec.4) : 1992 Insulating materials based on built-up mica or treated mica paper: Part 3 Specifications for individual materials, Section 4 Rigid mica materials for heating	31-7-2012
4.	IS/IEC 60371-3-5:2005 Specification for insulating materials based on mica- Part 3: Specification for individual materials -Section 5 Glass-backed mica paper with an epoxy resin binder for post-impregnation (VPI)	IS 9299 (Part 3/Sec.3) : 1982 Insulating materials based on built-up mica or treated mica paper: Part 3 Specifications for individual materials, Section 3 flexible mica flake tape for insulation of electrical machines	31-7-2012
5.	IS/IEC 60371-3-9:1995 Specification for insulating materials based on mica- Part 3: Specifications for individual materials -Section 9: Moulding Micanite	IS 9299 (Part 3/Sec. 5): 1992 Insulating materials based on built up mica or treated mica paper: Part 3 Specification for individual materials, Section 5, Flexible mica materials in sheet form	
		IS 9299 (Part 3/Sec. 2) : 1982 Insulating materials based on built-up mica or treated mica paper: Part 3 Specifications for individual materials, Section 2 Moulding mica materials for electrical purposes	31-7-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. ET 02/T-39, T-64, T-71, T-116, T-179]

R.K. TREHAN, Scientist 'E' & Head (Electrotechnical)

नई दिल्ली, 3 अगस्त, 2012

का.आ. 2608—भारतीय मानक ब्लूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्लूरो एतदारा अधिसूचित करता है कि जिन भारतीय मानकों के वितरण नीचे अनुसूची में दिया गया है वे स्थापित हो गये हैं:—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस/आई एस ओ 6621-1: 2007 आंतरिक दहन ईंजन पिस्टन रिंग भाग । पारिभाषित शब्दावली	आई एस 8422 (भाग 9): 1986	अप्रैल, 2012

इन भारतीय मानक की प्रतियां भारतीय मानक ब्लूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चंडीगढ़, चैन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूर्णे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ टी ई डी/जी-2]

टी.वी. सिंह, वैज्ञानिक 'एफ' एवं प्रमुख (टी ई डी)

New Delhi, the 3rd August, 2012

S. O. 2608.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. Year & title of the Indian Standards Established	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS/ISO 6621-1:2007 Internal combustion engines Piston rings Part 1 Vocabulary	IS 8422 (Part 9) : 1986	April, 2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. TED/G-2]

T.V. SINGH, Scientist 'F' & Head (Transport Engg.)

नई दिल्ली, 6 अगस्त, 2012

का.आ. 2609.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में एतद्वारा अधिसूचित किया जाता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं, वे रद्द कर दिए गए हैं और वापस ले लिये गये हैं :

अनुसूची

क्रम संख्या	रद्द किये गये मानक की संख्या, वर्ष और शीर्षक	भारत के राजपत्र भाग 2, खंड 3, उपखंड (ii) में का.आ. संख्या और तिथि	टिप्पणी
-------------	--	---	---------

(1)	(2)	(3)	(4)
1.	आई एस 15268 (भाग 1) : 2002/आई एस ओ 8037-1:1986 प्रकाशिकी और प्रकाशिक उपकरण -माइक्रोस्कोप-स्लाइड भाग 1 आयाम, प्रकाशिक गुणधर्म और मुहरांकन	अगस्त, 2012	निरीक्षण सुविधाओं के अभाव हेतु
2.	आई एस 15268 (भाग 2) : 2002/आई एस ओ 8037-2:1997 प्रकाशिकी और प्रकाशिक उपकरण -माइक्रोस्कोप-स्लाइड भाग 2 सामान की गुणवता फिनिश तथा पैकेजिंग का तरीका	अगस्त, 2012	निरीक्षण सुविधाओं के अभाव हेतु
3.	आई एस 15270(भाग 1) : 2002/आई एस ओ 8255-1:1986 प्रकाशिकी और प्रकाशिक उपकरण -माइक्रोस्कोप-आवरण ग्लास: भाग 1 आयाम छूटे मोटाई और प्रकाशिक गुणधर्म	अगस्त, 2012	निरीक्षण सुविधाओं के अभाव हेतु
4.	आई एस 15270(भाग 2) : 2002/आई एस ओ 8255-2:1997 प्रकाशिकी और प्रकाशिक उपकरण -माइक्रोस्कोप-आवरण ग्लास: भाग 2 सामान की गुणवता, फिनिश तथा पैकेजिंग का तरीका	अगस्त, 2012	निरीक्षण सुविधाओं के अभाव हेतु

[संदर्भ पीजीडी/जी-3.5]

एस. चौधरी, वैज्ञानिक 'एफ' एवं प्रमुख (पीजीडी)

New Delhi, the 6th August, 2012

S. O. 2609.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, it is hereby notified that the Indian Standards, particulars of which are mentioned in the Schedule give hereafter, have been cancelled and stand withdrawn.

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Cancelled	S.O. No. & Date published in the Gazette of India, Part-II, Section-3, Sub-section (ii)	Remarks
(1)	(2)	(3)	(4)
1.	IS 15268 (Pt. 1): 2002 /ISO 8037-1:1986	Optics and optical instruments- Microscopes- Slides Part I Dimensions, optical properties and marking	Due to lack of testing facilities
2.	IS 15268 (Pt. 2): 2002 /ISO 8037-2:1997	Optics and optical instruments- Microscopes- Slides Part 2 Quality of material, standards of finish and mode of packaging	Due to lack of testing facilities
3.	IS 15270 (Pt. 1): 2002 /ISO 8255-1:1986	Optics and optical instruments- Microscopes- Cover glasses: Part 1 Dimensional tolerances thickness and optical properties	Due to lack of testing facilities
4.	IS 15270 (Pt. 2): 2002 /ISO 8255-2:1997	Optics and optical instruments- Microscopes- Cover glasses: Part 2 Quality of material, standards of finish and mode of packaging	Due to lack of testing facilities

[Ref. PGD/G-3.5]

S. CHOWDHURY, Scientist 'F' & Head (PGD)

नई दिल्ली, 7 अगस्त, 2012

का.आ. 2610.—भारतीय मानक व्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में एतदद्वारा भारतीय मानक व्यूरो एतदद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के संशोधन के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या, वर्ष और शीर्षक	संशोधन संख्या और वर्ष	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 4079 : 1967 डिब्बाबंद रसगुल्ला की विशिष्टि	संशोधन संख्या 2 वर्ष 2012	31 जुलाई, 2012

इन संशोधनों की प्रतियां भारतीय मानक व्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चैन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ एफएडी/जी-128]

डॉ. आर. के. बजाज, वैज्ञानिक 'एफ' एवं प्रमुख (खाद्य एवं कृषि)

New Delhi, the 7th August, 2012

S. O. 2610.—In pursuance of Clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the amendment to the Indian Standard, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. & Year of the Indian Standards	No. & Year of the Amendment	Date of which the Amendment shall have effect
1.	IS 4079:1967 Specification for canned Rasogolla	Amendment No. 2 Year 2012	31 July, 2012

Copy of the amendment is available with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Trivandrum.

[Ref. FAD/G-128]

Dr. R.K. BAJAJ, Scientist 'F' and Head (Food and Agri.)

नई दिल्ली, 7 अगस्त, 2012

का.आ. 2611.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :-

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भा. मा. भाग अनु. वर्ष संख्या				
					1	2	3	4	5
1.	3823261	4-4-2012	मैसर्स रैलिस इंडिया लिमिटेड, प्लाट नंबर 2808, बी1/बी2, जी आई डी सी, भारूच, अंकलेश्वर	लाम्बडा-सायहालोथ्रीन डब्ल्यू पी	14510	-	-	-	1997
2.	3823564	19-4-2012	मैसर्स आर आर केबल लिमिटेड, आर एस नंबर 201, 202/1, 202/2, 203 तथा 327/3, खांडा रोड, वाघोडिया वडोदरा-391760	पी बी सी इंसूलेटिड (हैवी डब्यूटी) इलैक्ट्रिक केबल	1554	1	-	-	1988
3.	3825265	24-4-2012	मैसर्स टच लैमिनेट्स प्रा. लि. एट तथा पी ओ सोनासन, सिरामिक जोन के सामने, प्रातिज, साबरकांटा, सोनासर-383210	डैकोरेटिव थर्मोसैटिंग सिथ्रैटिक रेसिन बॉडिंड लैमिनेटिड शीट्स	2046	-	-	-	1995
4.	3824465	25-4-2012	मैसर्स श्री लक्ष्मी बुड इंडस्ट्रीज, ब्लाक नंबर, 119/120, उजेडिया रोड, सलतपुर चोकडी के पास, एट महियाल, ता तालोड, डि. साबरकांटा-383215	बुडन फ्लश डोर शटर्स (सालिड कोर टाईप)	2202	1	-	-	1999
5.	3825063	27-4-2012	मैसर्स जैट फाईबर पम्पस तथा इक्यूपैंट प्रा. लिमिटेड, यूनिट 2, ब्लाक नंबर 658, एट भुदरपुरा, माहिज गाँव तथा ता. खेडा- 387120	एमीटिंग पाईप सिस्टम	13488	-	-	-	2008
6.	3825164	27-4-2012	मैसर्स जैट फाईबर पम्पस तथा इक्यूपैंट प्रा. लिमिटेड, यूनिट 2, पालथिलीन पाईपस फार ब्लाक नंबर 658, एट भुदरपुरा, माहिज गाँव तथा ता. खेडा-387120	ईरीगेशन इक्यूपैंट पालथिलीन पाईपस फार ईरीगेशन लेटरल्स	12786	-	-	-	1989

1	2	3	4	5	6	7	8	9
7.	3825467	30-4-2012	मैसर्स सरस प्लाइवुड प्रोडक्ट्स प्रा लिमिटेड, प्लाट नंबर 744, न्यू जी आई डी सी, गुनलाव, वलसाद-396035	प्लाइवुड फार जनरल परपस	303	-	-	1989

[सं. सी एम डी/13:11]

टी. बी. नारायणन, वैज्ञानिक 'एफ' एवं प्रभुख

New Delhi, the 7th August, 2012

S.O. 2611.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule:

SCHEDULE

Sl. No.	Licences No.	Grant Date	Name and address of the party	Title of the Standard	IS No.	Part	Sec.	Year
1.	2	3	4	5	6	7	8	9
1.	3823261	4-4-2012	M/s. Rallis India Ltd. Plot No. 2808, B1/B2, G.I. D.C. Bharuch, Ankleshwar Gujarat	Lambda-cyhalothrin wp -	14510	-	-	1997
2.	3823564	19-4-2012	M/s. R.R. Kabel Limited R.S. No. 201, 202/1, 202/2, 203 and 327/3, Khanda Road, Waghodia, Vadodara-391760	Pvc insulated (heavy duty) electric cables:	1554	1	-	1988
3.	3825265	24-4-2012	M/s. Touch Laminates Pvt. Ltd AT & PO. Sonasan, Opp. Ceramic Zone, Prantij, Sabarkantha, Sonasan-383210	Decorative Thermosetting synthetic resin bonded laminated sheets	2046	-	-	1995
4.	3824465	25-4-2012	M/s. Shree Lamxi Wood Industries Block No. 119/120, Ujediya Road, Near Salatpur Chowkadi, At. Mahiyal, Ta. Talod, Dist. Sabarkantha-383215	Wooden flush door shutters (solid core type)	2202	1	-	1999
5.	3825063	27-4-2012	M/s. Jet Fibre Pumps and Equipments Pvt Ltd. Unit 2, Block No. 658, At Bhudarpura Mahij Village & Taluka Kheda- 387120	Emitting pipes system	13488	-	-	2008
6.	3825164	27-4-2012	M/s. Jet Fibre Pumps and Equipments Pvt Ltd. Unit 2, Block No. 658, At Bhudarpura Mahij Village & Taluka Kheda- 387120	Irrigation equipment- polyethylene pipes for irrigation laterals-	12786	1	-	1989
7.	3825467	30-4-2012	Saras Plywood Product Pvt. Ltd. Plywood for general Plot No. 744. New GIDC Gunlav purposes Valsad-396035	303	-	-	-	1989

[No. CMD/13:11]

T. B. NARAYANAN, Scientist 'F' & Head

नई दिल्ली, 7 अगस्त, 2012

का.आ. 2612.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (5) के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :-

अनुसूची

क्रम संख्या	लाइसेंस संख्या सीएम/एल-	लाइसेंसधारी का नाम व पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
1.	7410761	मैसर्स विमल फायर कंट्रोल्स प्रा. लिमिटेड, ए-1, 851/1-बी, जो आई डी सी, मकरपुरा इंडस्ट्रियल एस्टेट, बड़ोदा-390010	पोर्टेबल फायर एक्सtinguisher, ड्राई पाउडर (कार्टिज टाईप)	11-4-2012
2.	7509881	मैसर्स फायरस्टॉप इंजिनियर्स, 20, अमरनाथ इंडस्ट्रियल एस्टेट, ओल्ड मानेकचौक मिल कम्पाउंड, ईदगाह, चौकी, अहमदाबाद-380016	पोर्टेबल फायर एक्सtinguisher, ड्राई पाउडर (कांसटैट प्रेशर) टाईप (कांसटैट प्रेशर)	11-4-2012

[सं. सी एम डी/13:13]

टी. बी. नारायणन, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 7th August, 2012

S.O. 2612.—In pursuance of sub-regulation (6) of regulation (5) of the Bureau of Indian Standards (Certification) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled with effect from the date indicated against each:

SCHEDULE

Sl. No.	Licences No. CML-	Name & Address of the Licensee	Article/Process with relevant Indian Starndards covered by the licence cancelled	Date of cancellation
1.	7410761	M/s. Vimal Fire Controls Pvt. Ltd., A-1, 851/1-B, GIDC, Makarpura Industrial Estate, Baroda-390010	Portable Fire Extinguishers, Dry Powder (Cartridge Type) IS 2171 : 1999	11-4-2012
2.	7509881	M/s. Firestop Engineers 20, Amarnath Industrial Estate, Old Manekchowk Mill Compound, Idgah Chowki, Ahmedabad-380016	Portable Fire Extinguishers, Dry Powder Type (Constant Pressure) IS 13849 : 1993	11-4-2012

[No. CMD/13:13]

T. B. NARAYANAN, Scientist 'F' & Head

नई दिल्ली, 7 अगस्त, 2012

का.आ. 2613.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :-

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा.मा. संख्या	भा.मा. अनु. वर्ष		
1	2	3	4	5	6	7	8	9
1.	3826873	4-5-2012	मैसर्स रिसिको इंडस्ट्रीज, ब्लाक नंबर 197, प्लाट नंबर 197, शिव शक्ति इंडस्ट्रियल एस्टेट, गाँव डेलाड, ता. ओलपाड, सूरत-394540	पैकेजबंद पेयजल(अदर दैन 14543 - - 2004 पैकेज नेचुरल मिनरल वाटर)				

1	2	3	4	5	6	7	8	9
2.	3826974	4-5-2012	मैसर्स पुनित ज्वैलर्स, प्लाट नंबर 7/8, शॉप नंबर 8, अक्षरधाम अपार्टमेंट, सिंगापुर रोड, सूरत-395004	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
3.	3827067	4-5-2012	मैसर्स रत्नाभा ज्वैलरी प्रा. लिमिटेड, शॉप नंबर 2, आभूषण काम्पलैक्स, गोड डोड रोड, सूरत-395007	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
4.	3827471	4-5-2012	मैसर्स हाइड्रो टैक स्वीट वाटर, प्लाट नंबर 245/2, एट अलघाट, ता. महुआ, गाँव महुआ, डि. सूरत-395009	पैकेजबंद पेयजल(अदर दैन 14543 पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004
5.	3829475	4-5-2012	मैसर्स जय अंबे बिकरेज, ब्लाक नंबर 43, पैकी, एट तथा पोस्ट डावोल, ता. बोरसाड, डि. आनंद-388540	पैकेजबंद पेयजल(अदर दैन 14543 पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004
6.	3828978	4-5-2012	मैसर्स माईलस्टोन ट्यूब्स प्रा. लि., 1301/1, कराई रोड, गाँव वलाड, गांधीनगर-382355	स्टील ट्यूब्स फार स्ट्रकचरलं परपस	1161	-	-	1998
7.	3829071	7-5-2012	मैसर्स माईलस्टोन ट्यूब्स प्रा. लि., 1301/1, कराई रोड, गाँव वलाड, गांधीनगर-382355	हॉलो स्टील सैक्षणस फार स्ट्रकचरलं यूस	4923	-	-	1997
8.	3827572	7-5-2012	मैसर्स जयदेव ट्रेडर्स प्रा. लिमिटेड, पीपलाज, अहमदाबाद-382405	पैकेजबंद पेयजल(अदर दैन 14543 पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004
9.	3827370	7-5-2012	मैसर्स गिरिश नानचंदभाई चोकसी, 3/137, नवापुरा, पारसी शेरी, सूरत-395003	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
10.	3829576	10-5-2012	मैसर्स जल वरुण धारा, ब्लाक नंबर 266, प्लाट नंबर 58, एट गाँव बेडकुओं, नाजिक, ता. वायरा, डि. तापी, सूरत-394650	पैकेजबंद पेयजल (अदर दैन 14543 पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004
11.	3831765	15-5-2012	मैसर्स एकवा नीर हैल्थ केयर, प्लाट नंबर 215/2, मोरारजी सर्कल के पास, फेस-II जी आई डी सी, वापी, वलसाद-396195	पैकेजबंद पेयजल (अदर दैन 14543 पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004
12.	3832767	17-5-2012	मैसर्स पीरामिड मैटल इंडस्ट्रीज, प्लाट नंबर 3029, फेस-3, जी आई डी सी, छतराल, ता. कलोल, डि. गांधीनगर-382729	डोमेस्टिक प्रेशर कुकर्स	2347	-	-	2006
13.	3833365	17-5-2012	मैसर्स प्रकाश पैस्टिसाइड इंडस्ट्रीज, कलोरपाईरीफास प्लाट नंबर 339/ए, जाक ताल्लुका देहगाम, गांधीनगर	इमलसिफाएबल कंसन्ट्रेट	8944	-	-	1978

1	2	3	4	5	6	7	8	9
14.	3834569	17-5-2012	मैसर्स जलधारा मिनरल वाटर 35, विशाला इंडस्ट्रियल एस्टेट (वैस्ट), मधुरम एस्टेट के सामने, ओढ़व, निकोल रिंग रोड, अहमदाबाद-382415	पैकेजबंद पेयजल (अदर दैन 14543 - - 2004 पैकेज नेचुरल मिनरल				
15.	3833466	18-5-2012	मैसर्स विषयोर बिवरेज, एस नंबर 265/बी, ओल्ड आई पी सी एल रोड, दहेज गाँव, ता. वाणा, डि भारुच-392130	पैकेजबंद पेयजल (अदर दैन 14543 - - 2004 पैकेज नेचुरल मिनरल				
16.	3833567	18-5-2012	मैसर्स डॉगा वाटरटैक प्रा. लिमिटेड, हाई डैंसिटी पालिथिलीन प्लाट नंबर 3, कैलाश इंडस्ट्रियल एस्टेट, सर्वे नंबर 189/1 तथा 2, सप्लाईस एसार पेट्रोल पम्प के सामने, सानंद विरमगाम, हाइवे, एट आईवा, ता. सानंद, अहमदाबाद-382170	पाईप फार पोटेबल वाटर 4984	-	-	1995	
17.	3833264	18-5-2012	मैसर्स कबीर इंडस्ट्रीज, 42, महाकाली एस्टेट, गांटी स्टैंड के पीछे, शिवम स्कूल के पास, भीलवाडा, अमराईवाडी, अहमदाबाद-380026	सबमर्सिबल पम्पसैट	8034	-	-	2002
18.	3833971	21-5-2012	मैसर्स श्री निलोसकर इंडस्ट्रीज, ए 10, प्रकाश इंडस्ट्रियल एस्टेट, रीटा नार के सामने, वस्ट्राल रोड, अमराईवाडी, अहमदाबाद-380026	सबमर्सिबल पम्पसैट	8034	-	-	2002
19.	3840362	21-5-2012	मैसर्स अग्रवाल मित्तल कानकास्ट (प्रा.) लिमिटेड, सर्वे नंबर 2193पी इनगोट्स, बिलैट्स ब्लूम्स 3, चांपानेर रोड, गाँव चंद्रपुर, तथा सलैबस फार रि-रोलिंग ता. हल्लोल, डि पंचमहल-389350 इंट्र स्टील फार जनरल स्ट्रक्चरल परपस	कार्बन स्टील कास्ट बिलैट 2830	-	-	1992	
20.	3834973	22-5-2012	मैसर्स बिसलरी इंटरनेशनल प्रा. लि., पैकेजबंद पेयजल (अदर 2410 पी एवं 2411, फेस-II, जी आई डी सी इंडस्ट्रियल एस्टेट, वाटर) छतराल, ता. कलोल, गांधीनगर, छतराल-382729	दैन पैकेज नेचुरल मिनरल	14543 - - 2004			
21.	3835167	22-5-2012	मैसर्स प्योर केयर बिवरेजस, सी/13-15, हार्दिक पार्क, नागरा कैमबे रोड, कैमबे, डि आनंद-388620	पैकेजबंद पेयजल (अदर दैन पैकेज नेचुरल मिनरल	14543 - - 2004			
22.	3835268	23-5-2012	मैसर्स एच के शाह तथा कम्पनी, सर्वे नंबर 96/1, अंबाजी टैपल के पीछे, ओरसांग ब्रीज के पास, एट रेनिफोर्समैट) चाचक, पी ओ बोडेली, वडोदरा- 391135	प्रीकास्ट कांक्रीट पाईप (विद तथा विदाउट)	458	-	-	2003

1	2	3	4	5	6	7	8	9
23.	3835369	23-5-2012	मैसर्स मैक पम्प इंडस्ट्रीज, प्लाट नंबर 65, फेस 1, जी आई डी सी, नरोडा, अहमदाबाद-382330	ओपनवैल सबमर्सिबल पम्पसैट	14220	-	-	1994
24.	3834872	23-5-2012	मैसर्स कैमिकल प्रोसेस पाइपिंग प्रा. लिमिटेड, नंबर 126/128/129/ 137एबी/138/139/158एबी, गॉव वडसाला, एन एच नंबर 8, ता. तथा डि. बडोदरा-391243	जी आर पी पाईपस ज्वायंट्स तथा फिटिंग्स फार सिवरेज, इंडस्ट्रियल वेस्ट तथा वाटर (अदर दैन पोटेबल)	14402	-	-	1996
25.	3838577	23-5-2012	मैसर्स नीलकंठ हैल्थ केयर, प्लाट नंबर 81/6/1 फेस-1, जी आई डी सी, वटवा, अहमदाबाद-382445	पैकेजबंद पेयजल (अदर दैन पैकेज्ड नेचुरल मिनरल वाटर)	14543	-	-	2004
26.	3837474	24-5-2012	मैसर्स मासको पम्प तथा स्ट्रेयर इंडस्ट्रीज, 533/बी, मिनी स्लैम लेबर क्वाटर्स के सामने, भारत पेट्रोल पम्प के पीछे, नरोडा फायर स्टेशन के पास, नरोडा, अहमदाबाद-380025	सबमर्सिबल पम्पसैट	8034	-	-	2002
27.	3836068	24-5-2012	मैसर्स प्रवीण रतिलाल सोनी, 105, शिवशांकुल काम्पलैक्स, वाढी महल्लो, नवसारी-396445	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
28.	3836371	25-5-2012	मैसर्स श्रीराम सीमेंट लिमिटेड, हडाड, ता. डांता, डि. बनसकांडा-385110	पोर्टलैंड स्लैग सीमेंट	455	-	-	1989
29.	3837070	25-5-2012	मैसर्स प्रगति एंटरप्राइस, बी/15/24, सचिन उद्योगनगर, सहकारी मंडली पोपाडा, वांज, सचिन, सूरत-394230	बुडन फ्लश डोर शटर्स (सालिड कोर टाईप)	2202	1	-	1999
30.	3838375	25-5-2012	मैसर्स प्रमुख हैल्थ केयर, प्लाट नंबर 30, ग्राउंड फ्लोर, तुलसी इंडस्ट्रियल एस्टेट, उर्मी सोसाइटी के सामने, शैड 1, वेड रोड, सूरत-395004	पैकेजबंद पेयजल (अदर दैन पैकेज्ड नेचुरल मिनरल वाटर)	14543	-	-	2004
31.	3838678	25-5-2012	मैसर्स ऊन टिंबरटैक प्रा. लिमिटेड, सूरत सचिन रोड, ता. ऊन, सूरत-394210	बुडन फ्लश डोर शटर्स (सालिड कोर टाईप)	2202	1	-	1999
32.	3840463	25-5-2012	मैसर्स स्काई वाटर, पटेल फालिया, छापराभाथा प्राथमिक स्कूल के पीछे, अमरेली, सूरत	पैकेजबंद पेयजल (अदर दैन पैकेज्ड नेचुरल मिनरल वाटर)	14543	-	-	2004

1	2	3	4	5	6	7	8	9
33.	3838476	28-5-2012	मैसर्स शीतल बिवरेज, ता. वडगाम, बनसकांटा, वडगाम-385410	पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004
34.	3838173	29-5-2012	मैसर्स बड़ोदा सर्जिकल (इंडिया) प्रा. लिमिटेड, 242/19, जी आई डी सी, बाबोडिया बडोदा-391760	हैंडलुम काटन बैंडेज ब्लाथ, 863 नान स्टडिलाईस्टि	863	-	-	1988
35.	3838274	29-5-2012	मैसर्स अनुज बिवरेज, सर्वे नंबर 33, गाँव हांडिया (वीरपुर), एट ता. वीरपुर, डि. खेडा-388265	पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004
36.	3839074	30-5-2012	मैसर्स निसान इलैक्ट्रिकल्स (इंडिया) सैल्फ बालास्टिड लैमपस प्रा. लिमिटेड, सर्वे नंबर 440/1/2, फार जनरल लाइटिंग न्यू अहमदाबाद इंडस्ट्रियल एस्टेट, सर्विसिस (पार्ट-1 व पार्ट-2) सरखेज बावला हाइवे, गाँव मौरेया, ता सानंद, अहमदाबाद-382213	सैल्फ बालास्टिड लैमपस	15111	-	-	2002

[सं. सी एम डी/13:11]

टी. बी. नारायणन, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 7th August, 2012

S.O. 2613.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :

SCHEDULE

Sl. No.	Licences No.	Grant Date	Name and address of the party	Title of the Standard	IS No.	Part	Sec.	Year
1.	2	3	4	5	6	7	8	9
1.	3826873	4-5-2012	Risco Industries Block No. 197, Plot No. 197, Shiv Shakti Industrial Estate, Village Delad, Taluka Olpad, Surat-394540	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
2.	3826974	4-5-2012	Punit Jewellers Plot No. 7/8, Shop No. 8, Aksardham Appartment, Singanpor Road, Surat-395004	Gold and gold alloys, jewellery/artefacts- fineness and marking-	1417	-	-	1999
3.	3827067	4-5-2012	Ratna Abha Jewellery Pvt. Ltd. Shop No. 2 Abhusan Complex, Ghod DOD Road, Surat-395007	Gold and gold alloys, jewellery/artefacts- fineness and marking-	1417	-	-	1999
4.	3827471	4-5-2012	Hydro Tech Sweet Water Plot No. 245/2, At. Alghat, Ta. Mahuva, Village Mahuva, Dist. Surat-395009	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
5.	3829475	4-5-2012	Jay Ambe Beverages Block No. 43, Paiki, At. & Post Davol, Village Davol, Taluka Borsad, Dist. Anand-388540	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004

1.	2	3	4	5	6	7	8	9
6.	3828978	4-5-2012	M/s. Milestone Tubes Pvt. Ltd. 1301/1, Karai Road, Village Valad, Gandhinagar- 382355	Steel tubes for structural purposes	1161	-	-	1998
7.	3829071	7-5-2012	M/s. Milestone Tubes Pvt. Ltd. 1301/1, Karai Road, Village Valad, Gandhinagar- 382355	Hollow steel sections for structural use	4923	-	-	1997
8.	3827572	7-5-2012	M/s. Jaydev Traders Pvt. Ltd. Piplaj, Ahmedabad-382405	Packaged drinking water (other than packaged natural mineral water)-	14543	-	-	2004
9.	3827370	7-5-2012	Girishchandra Nanchandbhai Choksi, 3/137, Navapura, Parsi Sheri, Surat-395003	Gold and gold alloys, jewellery/artefacts- fineness and marking-	1417	-	-	1999
10.	3829576	10-5-2012	Jal Varun Dhara Block No. 266, Plot No. 58, At. Village Bedkuva, Najik, Taluka Vyara, Dist. Tapi, Surat, Bedkuva-394650	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
11.	3831765	15-5-2012	Aqua Neer Health Care Plot No. 215/2, Near Morarji Circle, Phase II, G.I.D.C. Vapi, Valsad- 396195	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
12.	3832767	17-5-2012	Pyramid Metal Industries Plot No. 3029, Phase-3, G.I.D.C. Chhatral, Taluka Kalol, Dist. Gandhinagar-382729	Domestic pressure cookers-	2347	-	-	2006
13.	3833365	17-5-2012	Prakash Pesticides Industries Plot No. 339/A, Zak Taluka Dahegam, Dist. Gandhinagar	Chlorpyrifos emulsifiable concentrates	8944	-	-	1978
14.	3834569	17-5-2012	Jaldhara Mineral Water 35, Vishala Industrial Estate (West), Opp. Madhuram Estate, Odhav, Nikol Ring Road, Ahmedabad-382415	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
15.	3833466	18-5-2012	Vpure Beverages S. No. 265/B, Old IPCL Road, Dahej, Village Tal. Vagara, Dist. Bharuch- 392130	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
16.	3833567	18-5-2012	Donga Water Tech Pvt. Ltd. Plot No. 3, Kailash Industrial Estate, Surey No. 189/1 & 2, Opp. Essar Petrol Pump. Sanand-Viramgam Highway, At Iyava, Tal-Sanand, Ahmedabad-382170	High density polyethyene pipes for potable water supplies	4984	-	-	1995

1.	2	3	4	5	6	7	8	9
17.	3833264	18-5-2012	Kabir Industries 42, Mahakali Estate, B/H Ganti Stand, Nr, Shivam School, Bhilwada, Amraiwadi, Ahmedabad-380026	Submersible pumpsets	8034	-	-	2002
18.	3833971	21-5-2012	Shree Niloskar Industries A-10, Prakash Industrial Estate, Opp. Rita Nagar, Vastral Road, Amraiwadi, Ahmedabad- 380026	Submersible pumpsets	8034	-	-	2002
19.	3840362	21-5-2012	Agarwal Mittal Concast (P) Ltd. Survey No. 2193 P3, Champaner Road, Vill. Chandrapur, Taluka Halol, Dist. Panchmahal-389350	Caron steel cast billet ingots, billets, blooms and slabs for re-rolling into steel for general structural purposes	2830	-	-	1992
20.	3834973	22-5-2012	Bisleri International Pvt. Ltd. 2410P & 2411, Phase II, GIDC Industrial Estate, Chhatral, Ta-Kalol, Gandhinagar Chhatral-382729	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
21.	3835167	22-5-2012	Pure Care Beverages C/13-15, Hardik Park, Nagara-Cambay Road, Cambay, Dist. Anand-388620	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
22.	3835268	23-5-2012	H. K. Shah & Co. Survey No. 96/1, Behind Ambaji Temple, Near Orsang Bridge, At Chachak, P.O. Bodeli, Vadodara-391135	Precast concrets pipes (with and without reinforcement)	458	-	-	2003
23.	3835369	23-5-2012	Mak Pump Industries Plot No. 65, Phase I, G.I.D.C. Naroda , Ahmedabad-382330	Openwell submersible pumpsets -	14220	-	-	1994
24.	3834872	23-5-2012	Chemical Process Piping Pvt. Ltd. Block No. 126/128/129/137AB/ 138/139/158AB, Village Vadsala, N.H. No. 8, Taluka & Dist. Vadodara- 391243	GRP pipes joints and fitting for sewerage, industrial waste and water (other than potable)	14402	-	-	1996
25.	3838577	23-5-2012	Nilkanth Health Care Plot No. 81/6/1 Phase-1, G.I.D.C. Vatva, Ahmedabad-382445	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
26.	3837474	24-5-2012	Masoo Pump & Spares Industries 533/B, Opp. Mini Slam Labour Quarters, B/H Bharat Petrol Pump NR. Naroda Fire Station Naroda, Ahmedabad- 380025	Submersible pumpsets	8034	-	-	2002

1.	2	3	4	5	6	7	8	9
27.	3836068	24-5-2012	Pravin Ratilal Soni 105, Shivshankul Complex, Vadi Mahhalo, Navsari-396445	Gold and gold alloys, jewellery/artefacts- fineness and marking-	1417	-	-	1999
28.	3836371	25-5-2012	Shriram Cement Limited Hadad, Taldanta, Dist. Banaskantha-385110	Portland slag cement	455	-	-	1989
29.	3837070	25-5-2012	Pragati Enterprise B/15/24, Sachin Udyog Nagar, Sahkari Mandali Popada, Vanz, Sachin , Surat-394230	Wooden flush door shutters (solid core type)	2202	1	-	1999
30.	3838375	25-5-2012	Pramukh Health Care Plot No. 30, Ground Floor, Tulsi Industrial Estate, Opp. Urmi Soc Shed-1, Ved Road, Surat-395004	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
31.	3838678	25-5-2012	Unn Timbertech Pvt. Ltd. Surat Sachin Road, Tal Unn. Surat-394210	Wooden flush door shutters (solid core type)	2202	1	-	1999
32.	3840463	25-5-2012	Sky Water Patel Faliya, B/H Chhaprabhathha, Prathmik School, Amroli, Surat	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
33.	3838476	28-5-2012	Shital Beverages Vill. Vadgam, Tal Vadgam, Banas Kantha Vadgam-395410	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
34.	3838173	29-5-2012	Baroda Surgical (India)Pvt. Ltd. 242/19, G.I.D.C., Waghodia Vadodara-391760	Handloom cotton bandage Cloth, non-sterilized	863	-	-	1988
35.	3838274	29-5-2012	Anuj Beverages Survey No. 33, Village Handia (Virpur), At Taluka Virpur, Dist. Kheda-388265	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
36.	3839074	30-5-2012	Nisan Electricals (India) Pvt.Ltd Survey No. 440/1/2, New Ahmedabad Industrial Estate, Surkhej Bavla Highway, Vill. Moraiya, Tal Sanand, Ahmedabad-382213	Self ballasted lamps for general lighting services (Part-1 & Part-2)	15111	-	-	2002

[No. CMD/13:11]

T.B. NARAYANAN, Scientist 'F' & Head

नई दिल्ली, 7 अगस्त, 2012

का.आ. 2614.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 5 के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :—

अनुसूची

क्र. सं.	लाइसेंस संख्या सीएम/एल-	लाइसेंसधारी का नाम व पता	लाइसेंस के अन्तर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि (5)
(1)	(2)	(3)	(4)	(5)
1.	3681469	मैसर्स गनैबो इंडिया प्रा लिमिटेड, प्लाट नंबर. 1302-1306, जी आई डी सी इंडस्ट्रियल एस्टेट, चंपानेर रोड, हलोल, डि पंचमहल 389350	पोटेबल फायर एक्सटिगिवशर ड्राई पाउडर टाईप (कांसटैट प्रेशर) आई एस 849: 1993	02-05-2012
2.	3760364	मैसर्स गनैबो इंडिया प्रा लिमिटेड, प्लाट नंबर. 1302-1306, जी आई डी सी इंडस्ट्रियल एस्टेट, चंपानेर रोड, हलोल, डि पंचमहल 389350	पोटेबल फायर एक्सटिगिवशर मकैनिकल फोम टाईप आई एस 10204: 2001	02-05-2012
3.	3760465	मैसर्स गनैबो इंडिया प्रा लिमिटेड, प्लाट नंबर. 1302-1306, जी आई डी सी इंडस्ट्रियल एस्टेट, चंपानेर रोड, हलोल, डि पंचमहल 389350	पोटेबल फायर एक्सटिगिवशर वाटर टाईप (गैस कार्टिज) आई एस 940: 2003	02-05-2012
4.	3760566	मैसर्स गनैबो इंडिया प्रा लिमिटेड, प्लाट नंबर. 1302-1306, जी आई डी सी इंडस्ट्रियल एस्टेट, चंपानेर रोड, हलोल, डि पंचमहल 389350	पोटेबल फायर एक्सटिगिवशर ड्राई पाउडर (कार्टिज टाईप) आई एस 2171: 1999	02-05-2012
5.	7102851	मैसर्स बडोदा सर्जिकल (इंडिया) प्रा लिमिटेड, 242/19 जी आई डी सी, वाघोडिया, डि बडोदरा 391760	हैंडलुम काटन बैंडेज क्लाथ, नान स्टडोलाइस्ट आई एस 863: 1988	11-05-2012
6.	3771874	मैसर्स श्री गोपीनाथ ज्वैलर्स, प्रा लिमिटेड, शॉप नंबर 1-2, सूर्य शॉपिंग सैंटर, सेवाश्रम रोड, ख् डिस्ट्रिक्ट भारुच 392001	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417: 1999	23-05-2012
7.	7586903	मैसर्स वी आर जावेरी, 46, सुपर माल, लाल बंगला के पास, सी जी रोड, एलिसब्रीज, अहमदाबाद 380006	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417: 1999	23-05-2012

(1)	(2)	(3)	(4)	(5)
8.	7689307	मैसर्स शक्ति ज्वैलर्स, कटरगाम सर्वे. 54, ब्लाक नंबर. 183, कुबेरनगर-1, पी ओ कटरगाम, (कटरगाम दरवाजा बाहर), डिस्ट्रिक्ट सूरत-395004	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417: 1999	23-05-2012
9.	7696910	मैसर्स योगेश कुमार तथा ब्रदर्स, 3/304, एन आर, अशोक स्टंभ टावर बाजार के पास, डिस्ट्रिक्ट आनंद-388001	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417: 1999	24-05-2012
10.	7783905	मैसर्स प्रभुदास ज्वैलर्स, जी-10 हरिबा व्यापार भवन, जी. पी. रोड, आनंद-388001	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417: 1999	24-05-2012
11.	7551476	मैसर्स बुड तथा पेपर इंडस्ट्रीज, एट तथा पोस्ट बाजार, बाजार रेलवे स्टेशन के पास डि. वडोदरा-391310	बुडन फलश डोर शार्ट्स (सालिड कोर टाईप) आई एस 2202(पार्ट 1): 1999	30-05-2012

[सं. सी एम डी/13:13]

टो. बी. नारायणन, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 7th August, 2012

S.O. 2614.—In pursuance of sub-regulation (6) of the Regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988 of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled with effect from the date indicated against each :—

SCHEDULE

Sl. No.	Licences No. CM/L—	Name and Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled	Date of Cancellation
(1)	(2)	(3)	(4)	(5)
1.	3681469	M/s. Gunnebo India Private Limited, Plot No. 1302-1306, GIDC Industrial Estate, Champaner Road, Halol Distt : Panchmahal -389350	Portable Fire Extinguisher Dry Powder Type (constant pressure) IS 13849: 1993	02-05-2012
2.	3760364	M/s. Gunnebo India Private Limited, Plot No. 1302-1306, GIDC Industrial Estate, Champaner Road, Halol Distt : Panchmahal-389350	Portable Fire Extinguisher Mechanical Foam Type IS 10204: 2001	02-05-2012
3.	3760465	M/s. Gunnebo India Private Limited, Plot No. 1302-1306, GIDC Industrial Estate, Champaner Road, Halol Distt : Panchmahal-389350	Portable Fire Extinguisher water Type (gas Cartridge) IS 940: 2003	02-05-2012

(1)	(2)	(3)	(4)	(5)
4.	3760566	M/s. Gunnebo India Private Limited, Plot No. 1302-1306, GIDC Industrial Estate, Champaner Road, Halol Distt : Panchmahal-389350	Portable Fire Extinguisher Dry Powder (cartridge type) IS 2171: 1999	02-05-2012
5.	7102851	M/s. Baroda Surgical (India) Pvt. Limited, 242/19 G I. D. C. Waghdoria, Distt: Vadodara-391760	Handloom cotton bandage cloth, non sterilized IS 863: 1988	11-05-2012
6.	3771874	M/s. Shree Gopinath Jewellers Pvt. Ltd, Shop No. 1-2, Surya Shopping Centre, Sevashram Road, Bharuch Distt : Bharuch-392001	Gold and gold alloys, jewellery/artefacts- fineness and marking IS 1417:1999	23-05-2012
7.	7586903	M/s. V. R. Zaveri 46, Super Mall, Near Lal Bunglow, C.G Road, Ellisbridge Distt : Ahmadabad-380006	Gold and gold alloys, jewellery/artefacts- fineness and marking IS 1417:1999	23-05-2012
8.	7689307	M/s. Shakti Jewellers Katargam Survey No. 54, Block No. 183, Kurni Nagar-1, PO. Katargam (Katargam Darwaja Bahar) Distt: Surat-395004	Gold and gold alloys, jewellery/artefacts- fineness and marking IS 1417:1999	23-05-2012
9.	7696910	M/s. Yogesh Kumar & Brothers, 3/304, NR Ashok Stambh Tower Bazar, Distt : Anand-388001	Gold and gold alloys, jewellery/artefacts- fineness and marking IS 1417:1999	24-05-2012
10.	7783905	M/s. Prabhudas Jewellers G-10 Hariba Vyapar Bhavan G P O Road Anand-388001	Gold and gold alloys, jewellery/artefacts- fineness and marking IS 1417:1999	24-05-2012
11.	7551476	M/s. Wood and Paper Industries, At & Post Bajwa, Near Bajwa Railway Station, Bajwa Distt : Vadodara-391310	Wooden flush door shutters (solid core type) IS 2202(Part 1) : 1999	30-05-2012

[No. CMD/13:13]

T. B. NARAYANAN, Scientist 'F' & Head

नई दिल्ली, 7 अगस्त, 2012

का.आ. 2615.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्र. सं	लाइसेंस संख्या	स्वेच्छा करने की तिथि, वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा. मा. संख्या	भाग	अनु संख्या	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3841566	04-06-2012	मैसर्स सोमानी सिरामिक्स लिमिटेड, 14, जी आई डी सी इंडस्ट्रियल एस्टेट, मेहसाना कडी-382715	प्रेसड सिरामिक्स टाइल्स	15622	-	-	2006
2.	3840766	06-06-2012	मैसर्स मंगलम ज्वैलर्स, 313-314 सिटी सैटर मार्केट, पारले पाईट गोड डोड रोड, सूरत-395001	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
3.	3840867	06-06-2012	मैसर्स सोनी हसमुखलाल चंपकलाल, स्टेट बैंक ऑफ इंडिया के पास, बानियावाड, शराफ स्ट्रीट, किला पारडी, डि बलसाद-396125	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
4.	3840059	06-06-2012	मैसर्स बालाजी गोल्ड पैलेस, 14, वर्धमान शॉपिंग सैटर, एल आई सी ब्रांच के नीचे, गाथामान गेट, गोबरी रोड, पालनपुर, बनसकांटा	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
5.	3840261	06-06-2012	मैसर्स शानु एंटरप्राइस, शॉप नंबर 55, आशादीप नगर, राष्ट्रभारती स्कूल के सामने, सी टी एम हटकेश्वर रोड, अमराईवाडी, अहमदाबाद-380026	पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004
6.	3843469	11-06-2012	मैसर्स जय बिवरेजस, रामपुरा पाटिया, विसनगर, उंझा हाइवे, ता. विसनगर, आयासारा कंसा . मेहसाना-384313	पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004
7.	3843570	18-06-2012	मैसर्स टौरेंट केबल लिमिटेड, योगीनगर, मिशन रोड, नडियाड, डि खेडा-387002	क्रास लिंकड फाली-थलीन इंसुलेटेड थमोंप्लास्टिक शीथड केबलस	7098	3	-	1993
8.	3843671	18-06-2012	मैसर्स प्रमुख वाटर, 24, विक्रम एस्टेट, राजकमल पेट्रोल पम्प के पीछे, गाँव मेहसाना-384002	पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
9.	3843368	19-06-2012	मैसर्स वजू भाई ज्वैलर्स 10/1154, ब्राज विला, ग्राउंड फलोर, के डी रोड, गोपीपुरा, सूरत 395001	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
10.	3844673	20-06-2012	मैसर्स हस बिवरेज प्रा लिमिटेड, लक्ष्मी नारायणन आईस फैक्टरी कम्पाउंड, वि शाला होटल के सामने, सरखेज नारोल रोड, जुहापुरा, अहमदाबाद 380055	पैकेजबंद पेयजल (अदर दैन पैकेज्ड नेचुरल मिनरल वाटर)	14543	-	-	2004
11.	3845372	20-06-2012	मैसर्स श्री शक्ति प्लाईवुड इंडस्ट्रीज, सी/24-3, सचिन उद्योग नगर, सहकारी मंडली लिमिटेड, गॉव वांज, ता चोराईसी, सूरत 394230	बुडन फलशा डोर शटर्स (सालिड कोर टाईप)	2202	1	-	1999
12.	3846273	20-06-2012	मैसर्स मदर फाउंडेशन, प्लाट नंबर 79, 80 साई आशीष सोसाइटी, उत्तरन रोड, अमरोलीख ता सूरत 394107	पैकेजबंद पेयजल (अदर दैन पैकेज्ड नेचुरल मिनरल वाटर)	14543	-	-	2004
13.	3844774	21-06-2012	मैसर्स पायलट इंडस्ट्रीज, कानवैंट इंगलिश स्कूल के पास, अहमदाबाद हाइवे, पालनपुर, डी बी के (उत्तर गुजरात) पालनपुर 385001	सबमर्सिल पम्पसैट	8034	-	-	2002
14.	3844572	21-06-2012	मैसर्स निशान पम्पस, ए/9/10, मंगलम एस्टेट, मार्डन एस्टेट के पास, मैम्को, नरोडा, अहमदाबाद 380025	सबमर्सिल पम्पसैट	8034	-	-	2002
15.	3846071	28-06-2012	मैसर्स देवल बिवरेज, प्लाट नंबर बी-15, शंकरभाई पटेल इंडस्ट्रियल एस्टेट खमंजूसर, ता सावली, डी बडोदरा 391775	पैकेजबंद पेयजल (अदर दैन पैकेज्ड नेचुरल मिनरल वाटर)	14543	-	-	2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
16.	3846172	28-06-2012	मैसर्स चामुंडा प्रा लिमिटेड, प्लाट नंबर 9085, जी आई डी सी एस्टेट, फेस IV , नरोडा, अहमदाबाद 382330	हाई डैसिटी पालथिलीन पाइप फार पोटेबल वाटर सपलाईस	4984	-	-	1985

[सं. सी एम डी/13:11]
टी. बी. नारायणन, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 7th August, 2012

S.O. 2615.—In pursuance of sub-regulation (5) of the Regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :—

SCHEDULE

Sl. No.	Licences No.	Grant Date	Name and Address of the Party	Title of the Standard	IS No.	Part	Sec.	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3841566	04-06-2012	M/s. Somany Ceramics Ltd., 14, G I. D. C. Industrial Estate, Mahesana, Kadi 382715	Pressed ceramic tiles	15622	-	-	2006
2.	3840766	06-06-2012	Mangalam Jewellers, 313-314 City Centre Market, Parle Point Ghod-Dod-Road Surat 395001	Gold and gold alloys, Jewellery/ artefacts—fineness and marking	1417	-	-	1999
3.	3840867	06-06-2012	Soni Hasmukhlal Champaklal, Near State Bank of India, Vaniawad. Shroff Street, Killa Pardi, Dist : Valsad-396125	Gold and gold alloys, Jewellery/ artefacts—fineness and marking -	1417	-	-	1999
4.	3840059	06-06-2012	Balaji Gold Palace Lt. Vardhaman Shopping Centre, Below LIC Branch, Gathaman Gate, Gobri Road, Palanpur Banas Kantha	Gold and gold alloys, Jewellery/ artefacts—fineness and marking	1417	-	-	1999
5.	3840261	06-06-2012	Shagun Enterprises Shop No. 55, Ashadeep Nagar, Opp Rastra Bharti School C T M Hatkeshwar Road, Amraiwadi, Ahmedabad 380026	Packed drinking water (other than packaged natural mineral water)	14543	-	-	2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
6.	3843469	11-06-2012	Jay Beverages Rampura Patiya, Visnagar-Unjha Highway, Ta Visnagar Iyasara-Kansa Mahesana 384315	Packed drinking water (other than packaged natural mineral water)	14543	-	-	2004
7.	3843570	18-06-2012	Torrent Cables Limited Yoginagar, Mission Road, Nadiad Dist Kheda- 3827002	Cross-linked polyethylene insul- ated thermoplastic sheathed cables	7098	3	-	1993
8.	3843671	18-06-2012	Pramukh Water 24, Vikram Estate, Behind Rajkamal Petrol Pump, Village Mehsana- 384002	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
9.	3843368	19-06-2012	Vajubhai Jewellers 10/1154, VRAJ Villa, Ground, Floor K.D. Road, Gopipura Surat-395001	Gold and gold alloys, Jewellery/ artefacts—fineness and marking	1417	-	-	1999
10.	3844673	20-06-2012	Hus Beverages Pvt. Ltd. Laxmi Narayan Ice Factory Compound, Opp. Vishal A Hotel, Sarkhej-Narol Road, Juhapura, Ahmedabad-380055	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
11.	3845372	20-06-2012	Shree Shakti Plywood Industries, C/24-3 Sachin Udyog Nagar, Sahkari Mandli Ltd. Vill Vanz, Taluka Choryasi, Surat Vanz-394230	Wooden flush door shutters (solid core type)	2202	1	-	1999
12.	3846273	20-06-2012	Mother Foundation Plot No. 79, 80 Sai Ashish Society, Utran Road, Amroli, Tal Surat -394107	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
13.	3844774	21-06-2012	Pilot Industries Near Convent Eng. School, Ahmedabad Highway Palanpur Dist. B. K. (N. Gujarat) Palanpur- 385001	Submersible pumpsets	8034	-	-	2002

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
14.	3844572	21-06-2012	Nishan Pumps A/9/10 Mangalam Estate, Near Modern Estate, Memco, Naroda, Ahmedabad -380025	Submersible pumpsets	8034	-	-	2002
15.	3846071	28-06-2012	Deval Beverages Plot No. B-15, Shankarbhai Patel Ind. Estate, Manjusar, Ta Savli Dist Vadodara -391775	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
16.	3846172	28-06-2012	Chamunda Pvt. Ltd. Plot No. 9085, GIDC Estate Phase-IV, Naroda, Ahmedabad- 382330	High density polyethylene Pipes for potable water supplies	4984	-	-	1985

[No. CMD/13 : 11]

T. B. NARAYANAN, Scientist 'F' & Head

नई दिल्ली, 7 अगस्त, 2012

का.आ. 2616.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 5 के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :-

अनुसूची

क्र. सं.	लाइसेंस संख्या सीएम/एल-	लाइसेंसधारी का नाम व पता	लाइसेंस के अन्तर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
(1)	(2)	(3)	(4)	(5)
1.	7737086	मैसर्स श्रीजी ज्वैलर्स, 24, यू.एल, अग्रवाल टावर, भुयांगदेव चार रास्ता, सोला रोड, घाटलोडिया, अहमदाबाद-380061	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417: 1999	07-06-2012

[सं. सी एम डी/13:13]

टी. बी. नारायणन, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 7th August, 2012

S.O. 2616.—In pursuance of sub-regulation (6) of the Regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988 of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled with effect from the date indicated against each :—

SCHEDULE

Sl. No.	Licence No. CM/L-	Name and Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence, cancelled	Date of Cancellation
(1)	(2)	(3)	(4)	(5)
1.	7737086	M/s. Shreeji Jewellers 24, UL, Agrawal Tower, Bhuyangdev Char Rasta, Sola Road, Ghatlodia, Ahmedabad -380061	Gold and gold alloys, jewellery/artefacts- fineness and marking IS 1417:1999	07-06-2012

[No. CMD/13:13]

T. B. NARAYANAN, Scientist 'F' & Head

नई दिल्ली, 9 अगस्त, 2012

का.आ. 2617.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्रम सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि, वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा. मा. संख्या	भाग	खण्ड वर्ष (8) (9)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
1.	3850769	13-07-2012	लॉयडस लाइन पार्फ्स लिमिटेड, एम.1, एडिशनल एम. आई. डी. सी., कुदावली विलेज, मुरबाड़, जिला : थाणे-421401	संरचना उपयोग के लिए इस्पात के खोखले सेक्षन	4923	-	- 1997
2.	3853472	19-07-2012	सनबीम होम अप्लायांसेस क्रिसेंट इण्ड. इस्टेट, युनिट नं. 01/ए, ऑफ कांजुर विलेज रोड, कांजुरमार्ग (पूर्व), मुंबई-400042	द्रवित पेट्रोलियम गैस के साथ प्रयुक्त घरेलु गैस चुल्हा	4246	-	- 2002
3.	3855375	26-07-2012	मैसर्स वाडा स्टील मोल्ड (इंडिया) प्रा. लि., 274 बी/ 275 बी, भारत फर्टिलाइजर रोड, विलेज खारीवली, वाडा, जिला : थाणे-431302	कंक्रीट प्रबलन के लिए उच्च शक्ति विस्तृपित इस्पात सरिए एवं तार	1786	-	- 2008
4.	3857581	23-07-2012	आदित एन्टरप्राइजेस गाला नं. 4, चांद बिबी निवास, मुल्ला कंपाउण्ड, कोकणी वाडा, एस. के. मार्ग, दहिसर (पूर्व), मुंबई-400068	ढलवाँ एत्यूमनियम वर्तन	1660	-	- 2009
5.	3858482	23-07-2012	श्रीजी सेफटाईम अप्लायांसेस प्रा. लि., प्लॉट नं. 48, सर्वे नं. 66, वालीब फाटा, बसई (पूर्व), जिला : थाणे-401208	सुवाह्य अग्नि शामक - कार्ब कारिता और निर्माण	15683	-	- 2006

[सं. केन्द्रीय प्रमाणन विभाग/13:11]

डॉ. एस. एल. पालकर, वैज्ञानिक 'एफ' एवं प्रमुख (प्रमाणन विभाग-II)

New Delhi, the 9th August, 2012

S.O. 2617.—In pursuance of sub-regulation (5) of the Regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :—

SCHEDULE

Sl. No.	CML No.	GOL Date	Licensee Name & Address	IS Product	IS No.	Part	Sec.	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3850769	13-07-2012	Lloyds Line Pipes Limited M-1, Additional M.I.D.C., Kudavali Village Murbad, Distt : Thane - 421401	Hollow Steel Section for Structural use	4923	-	-	1997
2.	3853472	19-07-2012	Sunbeam Home Appliances Crescent Indl. Estate Unit No. 01/A, Off. Kanjur Village Road, Kanjur Marg (E), Distt : Mumbai - 400042	Domestic Gas Stoves for use with Liquefied Petroleum Gases	4246	-	-	2002
3.	3855375	26-07-2012	M/s. Wada Steel Mould (India) Pvt. Ltd. 274 B/275 B, Bharat Fertilizer Road, Village- Kharivali, Wada Dist : Thane-431302	High Strength Deformed Steel Bars and Wire for Concrete Reinforcement Steel Bars	1786	-	-	2008
4.	3857581	23-07-2012	Audit Enterprises Gala No. 4, Chand Bibi Niwas, Mulla Compound, Kokani Pada, S. K. Marg, Dahisar (E), Mumbai - 400068	Wrought Aluminium Utensils	1660	-	-	2009
5.	3858482	23-07-2012	Shreeji Safetime Appliances Pvt. Ltd. Plot No. 48, Survey No. 66, Waliv Phata, Vasai (E), Distt : Thane 401208	Portable Fire Extinguisher- Performance and Construction	15683	-	-	2006

[No. CMD/13:11]

Dr. S. L. PALKAR, Scientist 'F' & Head (MDM-II)

नई दिल्ली, 9 अगस्त, 2012

का.आ. 2618.—भारतीय मानक व्यूरो (प्रमाणन) विनियम, 1988 के विनियम 5 के उप-विनियम (6) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे रद्द कर दिए गए हैं :—

अनुसूची

क्र. सं.	लाइसेंस संख्या सीएम/एल	लाइसेंसधारी का नाम एवं पता	लाइसेंस के अन्तर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शोषक	रद्द करने की तिथि
(1)	(2)	(3)	(4)	(5)
1.	0875366	सफेक्स फायर सर्विसेस प्लॉट नं. 13, विलेज : माहिम, तालुका : पालघर, बिडको के सामने जिला : थाणे-401402	सुवाह्य अग्निशामक, शुष्क पाउडर (काट्रिज टाइप)	24-05-2012
2.	0962866	पिटर ऑटोकिट्स प्रा. लि. प्लॉट नं. 56, सर्वे नं. 75, विलेज : वालीब, अलकोन प्लास्टिक के नजदीक, तालुका : बसई (पूर्व) जिला : थाणे-401208	सुवाह्य अग्निशामक, शुष्क पाउडर (काट्रिज टाइप)	24-05-2012
3.	1394961	सफेक्स फायर सर्विसेस प्लॉट नं. 13, विलेज : माहिम, तालुका : पालघर, बिडको के सामने जिला : थाणे-401402	सुवाह्य अग्निशामक, जल टाइप (सतत दाब)	24-05-2012
4.	1426241	जेनेक्स (फायर अँण्ड सेफ्टी) प्रा. लि., जी -10-डी, लक्ष्मी वुलन मिल्स इस्टेट, शक्ति मिल लेन, महालक्ष्मी, मुंबई - 400011	अग्निशामक, कार्बन डाई आक्साईड टाइप (सुवाह्य और टॉली माउण्टेड)	02-07-2012
5.	1555656	पिटर ऑटोकिट्स प्रा. लि. प्लॉट नं. 56, सर्वे नं. 75, विलेज : वालीब, अलकोन प्लास्टिक के नजदीक, तालुका : बसई (पूर्व) जिला : थाणे-401208	सुवाह्य अग्निशामक, जल टाइप (सतत दाब)	24-05-2012
6.	2378160	पिटर ऑटोकिट्स प्रा. लि. प्लॉट नं. 56, सर्वे नं. 75, विलेज : वालीब, अलकोन प्लास्टिक के नजदीक, तालुका : बसई (पूर्व) जिला : थाणे-401208	सुवाह्य अग्निशामक यांत्रिक झाग किस्म	06-05-2012
7.	7105251	लक्ष्मी हॉटेल्स यूनिट 15-एफ, कुला इण्ड. इस-ट, एनएसएस रोड, बाटकोपर (पश्चिम), मुंबई -400086	सुवाह्य अग्निशामक, शुष्क पाउडर (काट्रिज टाइप)	03-04-2012

(1)	(2)	(3)	(4)	(5)
8.	7115860	एल्फरेक्स (फायर प्रोटेक्शन) इण्डस्ट्रिज, युनिट नं.18, शरद इण्डस्ट्रियल इस्टेट, लेक रोड, भांडुप (पश्चिम) मुंबई-400078	सुवाहय अग्निशामक, जल टाइप (सतत दाब)	03-04-2012
9.	7116559	एल्फरेक्स (फायर प्रोटेक्शन) इण्डस्ट्रिज, युनिट नं.18, शरद इण्डस्ट्रियल इस्टेट, लेक रोड, भांडुप (पश्चिम) मुंबई-400078	सुवाहय अग्निशामक, शुष्क पाउडर (कार्ट्रिज टाइप)	03-04-2012
10.	7118159	नितिन फायर प्रोटेक्शन ए- 117, टी. टी. सी. इण्ड. एरिया, खैरना, विलेज : नवी मुंबई-400701	सुवाहय अग्निशामक, शुष्क पाउडर (कार्ट्रिज टाइप)	03-04-2012
11.	7131151	भारती फायर इंजिनिअर्स प्लॉट नं. ए-427, टी. टी. इण्ड. एरिया, एम आय डी सी, म्हापे बस डेपो के नजदीक, नवी मुंबई, जिला : थाणे 400709	सुवाहय अग्निशामक, शुष्क पाउडर (कार्ट्रिज टाइप)	24-05-2012
12.	7131252	भारती फायर इंजिनिअर्स प्लॉट नं. ए-427, टी. टी.सी. इण्ड. एरिया, एम आय डी सी, म्हापे बस डेपो के नजदीक, नवी मुंबई, जिला : थाणे-400709	सुवाहय अग्निशामक, जल टाइप (सतत दाब)	24-05-2012
13.	7142661	जेनेक्स (फायर अॅण्ड सेफ्टी) प्रा. लि., जी -10-डी, लक्ष्मी बुलन मिल्स इस्टेट, शक्ति मिल लेन, महालक्ष्मी, मुंबई-400011	सुवाहय अग्निशामक, शुष्क पाउडर (कार्ट्रिज टाइप)	03-04-2012
14.	7212858	सफेक्स फायर सर्विसेस, प्लॉट सं. 13, विलेज : माहिम, तालुका : पालघर, बिडको के सामने जिला : थाणे-401402	शुष्क पावडर किस्म सुवाहय अग्निशामक (संग्रहित दाब)	18-05-2012
15.	7397997	मोनार्क इंजि कं 220-एफ, अटलास मिल कंपाउण्ड, रे रोड, मुंबई - 400010	सुवाहय अग्निशामक, शुष्क पाउडर (कार्ट्रिज टाइप)	03-04-2012
16.	7495492	न्यू भारत फायर प्रोटेक्शन सिस्टम प्रा. लि., गट सं. 214 (भाग), दिनकर याडा, कोथले विलेज तालुका : वाडा, जिला : ठाणे-421312	सुवाहय अग्निशामक, जल टाइप (सतत दाब)	26-06-2012

(1)	(2)	(3)	(4)	(5)
17.	7510967	सफेक्स फायर सर्विसेस, प्लॉट सं. 13, विलेज : माहिम, तालुका : पालघर, बिंडको के सामने जिला : थाणे-401402	सुवाह्य अग्निशामक, जल टाइप (सचित दाब)	24-05-2012
18.	7526679	रोनक फायर इण्डस्ट्रिज गाला सं. 25, 26, 27, 28, शैलेश इण्ड. इस्टेट, नं. 2, नवघर रोड, वसई (पूर्व), जिला : थाणे-401210	सुवाह्य अग्निशामक, जल टाइप (सतत दाब)	03-04-2012
19.	7526780	रोनक फायर इण्डस्ट्रिज गाला सं. 25, 26, 27, 28, शैलेश इण्ड.इस्टेट, नं. 2, नवघर रोड, वसई (पूर्व) जिला : थाणे-401210	सुवाह्य अग्निशामक, शुष्क पाउडर (काट्रिज टाइप)	03-04-2012
20.	7541170	श्रीजी सेफटाइम अस्यायंसेस प्रा.लि., प्लॉट नं. 48, सर्वे नं. 66, वालीव फाटा, वसई (पूर्व), जिला: थाणे-401208	सुवाह्य अग्निशामक, जल टाइप (सतत दाब)	26-06-2012
21.	7541271	श्रीजी सेफटाइम अस्यायंसेस प्रा.लि., प्लॉट नं. 48, सर्वे नं. 66, वालीव फाटा, वसई (पूर्व), जिला: थाणे-401208	सुवाह्य अग्निशामक, शुष्क पाउडर (काट्रिज टाइप)	03-04-2012
22.	7560477	जीओ फायर रेमिडिस प्रा. लि. प्लॉट नं. एल-94, एमआईडीसी, तालोजा, नवी मुंबई-410208	सुवाह्य अग्निशामक, जल टाइप (सतत दाब)	03-04-2012
23.	7560578	जीओ फायर रेमिडिस प्रा. लि. प्लॉट नं. एल-94, एमआईडीसी, तालोजा, नवी मुंबई-410208	सुवाह्य अग्निशामक, शुष्क पाउडर (काट्रिज टाइप)	03-04-2012
24.	7570783	युरो डेकोर प्रा. लि. सर्वे नं. 265/6, देमनी रोड, विलेज दादरा, दादरा और और नगर हवेली, सिस्त्वास-396191	परतदार सजावटी प्लाईवुड	20-07-2012
25.	7753387	विटेक्स फायर प्रोटक्षन प्रा. लि., आर-363 टीटीसी, इण्ड. एफ. ग रवाले, नवी मुंबई जिला : ठाणे-400701	सुवाह्य अग्निशामक, शुष्क पाउडर (काट्रिज टाइप)	24-05-2012
26.	7753488	विटेक्स फायर प्रोटक्षन प्रा. लि., आर-363 टीटीसी, इण्ड. एरिया रवाले, नवी मुंबई जिला : ठाणे-400701	सुवाह्य अग्निशामक, जल टाइप (सतत दाब)	24-05-2012

(1)	(2)	(3)	(4)	(5)
27.	7753589	विटेक्स फायर प्रोटेक्शन प्रा. लि., आर-363 टीटीसी, इण्ड. एरिया रवाले, नवी मुंबई जिला : थाणे-400701	सुवाहूय अग्निशामक यांत्रिक ज्ञाग किस्म	18-05-2012
28.	7888818	सफेक्स फायर सर्विसेस प्लॉट नं. 13, विलेज : माहिम, तालुका : पालघर, बिंडको के सामने जिला : थाणे-401402	सुवाहूय अग्निशामक यांत्रिक ज्ञाग किस्म (सौचित दःब)	18-05-2012
29.	7969111	मेपल मोल्डिंग्स प्रा. लि. एमएसएसआईडीसीएस, प्लॉट नं. 24, बुड वेस इण्डिस्ट्रियल कॉम्प्लेक्स, विलेज : गंधे, तालुका : वाढा जिला : थाणे-421303	बुडन फलश डोर शटर्स (ठोस कोर टाईप) भाग 1 प्लाईबुड फेस ऐनल	19-06-2012

[सं. केन्द्रीय प्रमाणन विभाग/13:11]

डॉ. एस. एल. पालकर, वैज्ञानिक 'एफ' एवं प्रमुख (प्रमाणन विभाग-II)

New Delhi, the 9th August, 2012

S.O. 2618.—In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given in the following schedule have been cancelled with effect from the date indicated against each :—

SCHEDULE

Sl. No.	Licences No. CM/L No.	Name and Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of Cancellation
(1)	(2)	(3)	(4)	(5)
1.	0875366	Safex Fire Services Plot No. 13, Village-Mahim Taluka-Palghar, Opp. BIDCO Distt - Thane -401402	Portable Fire Extinguishers, Dry Powder (Cartridge Type)	24-5-2012
2.	0962866	Peter Autokits P. Ltd. Plot No. 56, Survey No. 75, Village : Valiv, Near Alkon Plastics, Tal : Vasai (East), Distt - Thane -401208	Portable Fire Extinguishers, Dry Powder (Cartridge Type)	24-5-2012
3.	1394961	Safex Fire Services Plot No. 13, Village-Mahim Taluka-Palghar, Opp. BIDCO Distt - Thane -401402	Portable Fire Extinguishers, Water Type (Gas Cartridge)	24-5-2012
4.	1426241	Jainex (Fire & Safety) System Pvt. Ltd., G-10-D, Laxmi Woolen Mills Estate, Shakti Mill Lane, Mahalakshmi Mumbai- 400011	Fire Extinguishers, Carbon Dioxide Type (Port table and Trolley Mounted)	02-07-2012

(1)	(2)	(3)	(4)	(5)
5.	1555636	Peter Autokits P. Ltd. Plot No. 56, Survey No. 75, Village Valiv, Near Alkon Plastics, Tal : Vasai (East), Distt - Thane-401208	Portable Fire Extinguishers, Water Type (Gas Cartridge)	24-05-2012
6.	2378160	Peter Autokits P. Ltd. Plot No. 56, Survey No. 75, Village Valiv, Near Alkon Plastics, Tal : Vasai (East), Distt - Thane-401208	Portable Fire Extinguishers, Mechanical Foam Type	06-05-2012
7.	7105251	Laxmi Fabricators Unit No. 15-F, Kurla Indl. Estate, N.S.S Road, Ghatkopar (W), Mumbai-400086	Portable Fire Extinguishers, Dry Powder (Cartridge Type)	03-04-2012
8.	7115860	Everex (Fire Protection) Industries, Unit No. 18, Sharad Industrial Estate, Lake Road, Bhandup (W), Mumbai-400078	Portable Fire Extinguishers, Dry Type (Gas Cartridge)	03-04-2012
9.	7116559	Everex (Fire Protection) Industries, Unit No. 18, Sharad Industrial Estate, Lake Road, Bhandup (W), Mumbai-400078	Portable Fire Extinguishers, Water Powder (Cartridge Type)	03-04-2012
10.	7118159	Nitin Fire Protection A-117, T.T.C. Indl. Area, Khairna Village, Navi Mumbai-400701	Portable Fire Extinguishers, Dry Powder (Cartridge Type)	03-04-2012
11.	7131151	Bharati Fire Engineers Plot No. A 427, TTC Indl. Area, MIDC. Mahape, Near Mahape Bus Depot, Navi Mumbai, Distt : Thane-400709	Portable Fire Extinguishers, Dry Powder (Cartridge Type)	24-05-2012
12.	7131252	Bharati Fire Engineers Plot No. A 427, TTC Indl. Area, MIDC. Mahape, Near Mahape Bus Depot, Navi Mumbai, Distt : Thane-400709	Portable Fire Extinguishers, Water Type (Gas Cartridge)	24-05-2012
13.	7142661	Jainex (Fire & Safety) System Pvt. Ltd., G-10-D, Laxmi Woolen Mills Estate, Shakti Mill Lane, Mahalakshmi, Mumbai- 400011	Portable Fire Extinguishers, Dry Powder (Cartridge Type)	03-04-2012
14.	7212858	Safex Fire Services Plot No. 13, Village-Mahim Taluka-Palghar, Opp. BIDCO, Distt - Thane-401402	Portable Fire Extinguishers, Dry Powder Type (Constant Pressure)	18-05-2012

(1)	(2)	(3)	(4)	(5)
15.	7397997	Monark Engg Co. 220-F, Atlas Mill Compound, Reay Road, Mumbai-400010	Portable Fire Extinguishers, Dry Powder (Cartridges Type)	03-04-2012
16.	7495492	New Bharat Fire Protection System (Pvt.) Ltd. Gut No. 214 (Part), Dinkar Pada, Kondhle Village, Taluka-Wada, Distt. Thane - 421312	Portable Fire Extinguishers, Water Type (Gas Cartridge)	26-06-2012
17.	7510967	Safex Fire Services Plot No. 13, Village-Mahim, Taluka-Palghar	Portable Fire Extinguishers, Water Type (Stored Pressure)	24-05-2012
18.	7526679	Ronak Fire Industries Gala No : 25, 26, 27, 28 Shailesh Indl. Estate, No : 2 Navghar Road, Vasai (East), Distt. Thane - 401210	Portable Fire Extinguishers Water Type (Gas Cartridge)	03-04-2012
19.	7526780	Ronak Fire Industries Gala No : 25, 26, 27, 28 Shailesh Indl. Estate, No : 2 Navghar Road, Vasai (East), Distt. Thane - 401210	Portable Fire Extinguishers, Dry Powder (Cartridge Type)	03-04-2012
20.	7541170	Shreeji Safetime Appliances Pvt.Ltd., Plot No. 48, Survey No. 66 , Waliv Phata, Vasai Road (East), Distt. Thane - 401208	Portable Fire Extinguishers, Water Type (Gas Cartridge)	26-06-2012
21.	7541271	Shreeji Safetime Appliances Pvt.Ltd., Plot No. 48, Survey No. 66 , Waliv Phata, Vasai Road (East), Distt. Thane - 401208	Portable Fire Extinguishers, Dry Powder (Cartridge Type)	03-04-2012
22.	7560477	Geo Fire Remedies Pvt. Ltd., Plot No. L-94 MIDC. Taloja, Navi Mumbai- 410208	Portable Fire Extinguishers, Water Type (Gas Cartridge)	03-04-2012
23.	7560578	Geo.Fire Remedies Pvt. Ltd., Plot No. L-94 MIDC. Taloja, Navi Mumbai- 410208	Portable Fire Extinguisher, Dry Powder (Cartridge Type)	03-04-2012
24.	7570783	Euro Decor Pvt. Ltd. Survey No. 265/6, Demni Road, Village Dadra, Dadra and Nagar Haveli, Silvassa - 396191	Veneered Decorative Plywood	20-07-2012
25.	7753387	Vintex Fire Protection Pvt. Ltd., R-363. TTC. Indl. Area, Rabale, Navi Mumbai Distt . Thane - 400701	Portable Fire Extinguishers, Dry Powder (Cartridge Type)	24-05-2012

(1)	(2)	(3)	(4)	(5)
26.	7753488	Vintex Fire Protection Pvt. Ltd., R-363. TTC. Indl. Area, Rabale, Navi Mumbai Distt : Thane - 400701	Portable Fire Extinguishers Water Type (Gas Cartridge)	24-05-2012
27.	7753589	Vintex Fire Protection Pvt. Ltd., R-363. TTC. Indl. Area, Rabale, Navi Mumbai Distt : Thane - 400701	Portable Fire Extinguishers Mechanical Foam Type	18-05-2012
28.	7888818	Safex Fire Services Plot No. 13, Village-Mahim Taluka-Palghar, Opp. BIDCO, Distt - Thane-401402	Portable Fire Extinguishers, Mechanical Foam Type (Stored Pressure)	18-05-2012
29.	7969111	Maple Mouldings Pvt. Ltd. MSSIDCS, Plot No. 24, Wood Based Industrial Complex, Village-Gandhire Tal - Wada. Distt - Thane-421303	Wooden Flush Door Shutters (Soild Core Type) : Part 1 Plywood Face Panels	19-06-2012

[No. CMD/13:11]
Dr. S. L. PALKAR, Scientist 'F' & Head (MDM-II)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 26 जुलाई, 2012

का. आ. 2619.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में, भारत के राजपत्र में दिनांक 13 नवम्बर, 2010 को प्रकाशित पेट्रोलियम और प्राकृतिक गैस मंत्रालय की दिनांक 22 अक्टूबर, 2010 की अधिसूचना संख्या का. आ. 2822 में निम्नलिखित संशोधन करती है :—

उक्त अधिसूचना में, “श्री डी. के. सिंह, उप प्रचालन प्रबंधक, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, मथुरा-जालंधर पाइपलाइन, बिजवासन” शब्दों के स्थान पर “श्री अनिल कुमार सिंह, मुख्य प्रबंधक, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, मथुरा-जालंधर पाइपलाइन” शब्द रखे जाएंगे ।

यह अधिसूचना जारी होने की तारीख से लागू होगी ।

[फा. सं. आर-25011/9/2007-ओ.आर-I]

जे. के. सिंह, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 26th July, 2012

S.O. 2619.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of the Government of India, Ministry of Petroleum and Natural Gas Number S.O. 2822 dated 22nd October, 2010, published in the Gazette of India on 13th November, 2010 :—

In the said notification,

for the words "Shri D.K. Singh, Deputy Manager (Operations), Indian Oil Corporation Limited, Mathura-Jalandhar Pipeline, Bijwasan", the words "Shri Anil Kumar Singh, Chief Manager, Indian Oil Corporation Limited, Mathura-Jalandhar Pipeline Bijwasan," shall be substituted.

This notification will be effective from the date of its issue.

[F. No. R-25011/9/2007-OR-I]

J. K. SINGH, Under Secy.

नई दिल्ली, 14 अगस्त, 2012

का. आ. 2620.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में, नीचे दी गई अनुसूची के संभ 1 में उल्लिखित व्यक्ति को, उक्त अनुसूची के संभ 2 में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र के सम्बंध में उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का निर्वहन करने के लिए प्राधिकृत करती है, अथवा :—

अनुसूची

प्राधिकारी का नाम और पता	अधिकारिता का क्षेत्र
(1)	(2)
श्री संतोष कुमार मिश्र सक्षम प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, पाण्डीप-रायपुर-रांची पाइपलाइन परियोजना होटा काम्प्लेक्स, एंथापाली चौक एंथापाली, सम्बलपुर - 768004 ओडिशा	उडीसा राज्य

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. आर-25011/12/2010-ओआर-I]

लाल छन्दमा, अवर सचिव

New Delhi, the 14th August, 2012

S.O. 2620.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorizes the person mentioned in column (1) of the Schedule given below to perform the functions of the Competent Authority under the said Act, in respect of the area mentioned in column (2) of the said Schedule:—

SCHEDULE

Name and address of the Authority	Area of jurisdiction
(1)	(2)
Shri Santosh Kumar Mishra Competent Authority, Indian Oil Corporation Ltd. Paradip-Raipur-Ranchi Pipeline Project Hota Complex, Ainthapali Chawk, Ainthapali Sambalpur-768004 Odisha	State of Odisha

This notification is applicable from the date of its issue.

[F. No. R-25011/12/2010-OR-I]
LAL CHHANDAMA, Under Secy.

भ्रम एवं रोजगार मंत्रालय

नई दिल्ली, 19 जुलाई, 2012

का.आ. 2621.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भैसर्स मिनरल डक्सप्लोरेशन कार्पोरेशन लिमिटेड, नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण /प्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 76/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-7-2012 को प्राप्त हुआ था।

[सं. एल-29011/3/99-आई आर (एम)]
जोहन तोपनो, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 19th July, 2012

S. O.2621.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 76/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mineral Exploration Corporation Ltd., (Nagpur) and their workman, which was received by the Central Government on 9-7-2012.

[No. L-29011/3/99-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT /NGP /76/2002 Date: 16-4-2012

Party No. 1:

The Chairman -Cum - Managing Director,
Mineral Exploration Corporation Ltd.,
Seminary Hills, Nagpur-440006.

Versus

Party No. 2 :

The General Secretary,
MEC Employees Union, Seminary Hills,
Nagpur- 440006.

AWARD

(Dated: 16th April, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the

management of MECL and their 15 Canteen employees, for adjudication to CGIT-Cum-Labour Court, Jabalpur, as per letter No.L-29011/3/99-IR (M) dated 7-6-1999, with the following schedule:—

"Whether the action of the management of Mineral Exploration Corporation Ltd., Nagpur, in proposed and wrongful stoppage from work and not regularizing fifteen enlisted employees of Departmental Canteen at CHQ, MECL, Nagpur, is legal & justified ? If not, to what relief the said workmen are entitled and from what date?"

Subsequently, the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "MEC Employees Union", ("the union" in short) filed the statement of claim and the management of the M.E.C.L. ("Party No. 1" in short) filed its written statement.

The case of the union as projected in the statement of claim is that the Mineral Exploration Corporation came to be constituted in the year 1972 and since beginning the management has provided a canteen and eatable stuff were provided to the employees at subsidized rate and the said canteen is looked after and managed by the management and appointment of the workmen in the canteen is being done by the management and at no point of time in the past, there was any occasion to hand over the management of the said canteen to any other person on the basis of lease or license or contract or tenancy basis and at present there are about 14 employees in the canteen and their paid wages are being paid by the management and the activity of the canteen has become the service condition, in view of the various understandings between the union and the management and the long standing tradition and custom enjoyed by the employees and the management doesn't want the existence of a bargaining agency like the union and to curtail the membership of the union and to reduce its bargaining capacity, the management is adopting various tactics and discontinuance of the canteen activity is one of them and the conduct on the part of the management in discontinuing the canteen facilities is not only illegal, but the same is also unjustified. The further case of the union is that the workmen, who are now working in the canteen are employed Since 1985 and they are continuously working without any break and as such, their services cannot be dispensed with in any manner and the management in order to harass the employees intended to hand over the management of the canteen to a private contractor, which is an unfair labour practice and the change in the service condition without any understanding is breach of right vested in the union, as well as in the workmen and the management refused to open a talk in the matter of canteen management and under the understanding reached at

Bi-partite committee meeting dated 12-5-1988, between the union and the management, it was decided that the canteen would be run departmentally and not by any other agency and as such, any other activity touching the status of the canteen and workmen working there in will be the violation of service conditions of the employees. The union has prayed to declare the action of the management as illegal and unjustified and to direct the management to adopt the same practice and to continue the canteen and to regularize the workmen working in the canteen and to pay them the consequential benefits.

3. The party no. 1 in its written statement has pleaded inter-alia that the union had submitted a notice of strike on 8-4-1991, on various charter of demands including the demand of uniform service conditions and subsidies for the departmental canteens functioning in CHQ and Area Offices and the Central Government, Ministry of Labour, Vide their letter no. 29011/ 12/92-IR(Misc) dated 7-1-1993 had upheld its contentions that the workers working in the canteen are not the employees of the company and refused to refer the matter for adjudication and therefore, this reference is not sustainable in the eyes of law and the workers working in the canteen had raised a similar dispute by way of complaint before the Industrial Court, Nagpur, vide complaint no. ULPN No. 125/99 and the said complaint was pending for adjudication before the industrial court and the industrial court had granted status quo in the matter, but dismissed the complaint on 20-9-2003 and therefore, this reference is to be dismissed in limine, on the ground of res judicata. It is further pleaded by the party no. 1 that out of the fifteen workers, on whose behalf, the dispute has been raised, N.R. Nair is already dead and K. R. Raut, Sheikh Mahbood and Ramesh Kale have resigned and left the services of the canteen and the canteen is not being managed by it and a management committee has been formed to run the affairs of the canteen and the said management committee is being given grants from time to time to run the canteen and before the conciliation, it was specifically submitted that the co-operative society functioning in the company was to take over the affairs of the canteen and the service condition of the canteen workers will be decided by the society, but as the arrangement did not materialize, the affairs of the canteen continued to be run by the management committee and the company has no capacity to employ any workman in the regular establishment and 2300 officers and staff have already been given retirement under the VRS scheme and the management committee was constituted on 30-10-1984 and the representatives of the union are also members of the said committee and the union cannot force the management to run the canteen departmentally and to regularize the workmen and the union and the workmen are not entitled to any relief.

4. It is necessary to mention here that on 14-6-2004 and thereafter neither the union nor anybody else appeared

on behalf of the union. Though the case was adjourned from time to time, for adducing evidence from the side of the union, no evidence was adduced, so, by order dated 28-3-2011, evidence from the side of the union was closed.

The party no. 1 filed the evidence of witness, Shri Atam Prakash Gera on affidavit. As none appeared on behalf of the union to cross-examine the witness of party no. 1, "no cross" order was passed. The evidence of the witness for the party no. 1, which is reiteration of the facts mentioned in the written statement has remained unchallenged.

5. It is well settled that when a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail.

In this case, the union has not adduced any evidence in support of its claim. Moreover, the evidence adduced by the party no. 1 has remained unchallenged. Hence, the reference cannot be answered in favour of the union and no relief can be granted to the canteen workmen. Hence, it is ordered:—

ORDER

The action of the management of Mineral Exploration Corporation Ltd., Nagpur, in proposed and wrongful stoppage from work and not regularizing fifteen enlisted employees of Departmental Canteen at CHQ, MECL, Nagpur, is legal & justified. The workmen are not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 19 जुलाई, 2012

का.आ. 2622.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एयर इंडिया, अहमदाबाद के प्रबंधत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ संख्या 42/2004 आईटीसी संदर्भ 30/1996 (पुराना)] को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-7-2012 को प्राप्त हुआ था।

[सं. एल-11012/3/91-आई आर (एम)

जोहन तोपनो, अवर सचिव

New Delhi, the 19th July, 2012

S. O. 2622.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [Ref. No. 42/2004, ITC Ref. 30/1996 (Old)] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Air India (Ahmedabad) and their workmen, which was received by the Central Government on 9-7-2012.

[No. L-11012/3/91-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT,
AHMEDABAD**

Present : Binay Kumar Sinha,
Presiding Officer,
CGIT-cum-Labour Court,
Ahmedabad, Dated : 18th May, 2012

Reference: CGIT A of 42/2004

Reference: ITC. 30/1996 (Old)

1. Personnel Officer,
Air India, Air India Building,
Nariman Point,
Mumbai-400 021

2. Manager, Air India
Premchandra House,
172/1, High Court Marg,
Ashram Road, Ahmedabad

.....First Party

And their workman

Shri Mahesh R. Kanojia
14, Mangaldas Building,
Camp Sadar Bazar,
Ahmedabad-380002.

.....Second Party

For the first party : Shri Kishor V. Gadhia, Advocate
Shri Mahendra K. Patel Advocate

For the second party : G. K. Parmar, Representative, Gujarat
Kamdar Rahat Sangh General
Workers Union, Ahmedabad-38244

AWARD

The Appropriate Government/Government of India Ministry of Labour by its order No. L-11012 (3)/91-IR (Misc) New Delhi dated 3 October, 1996 in view of order dated 20-8-1996 passed by the Hon'ble High Court of Gujarat in LPA 744/1995 directing the Central Government to make the reference of the dispute under Section 10 (1) (d) of the ID Act, 1947, the Appropriate Government on reconsideration of the matter referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad formulating the terms of reference under the schedule as follows :—

SCHEDULE

"Whether the demand by Shri Mahesh R. Kanojia that he has completed continuous employment of over 240 days in a year before the termination of his employment on 31-7-1987 by the management is justified ? If so, whether Shri Kanojia, is entitled for protection under Section 25 of the ID Act ? If not, to what relief is Shri Kanojia entitled ?"

2. Case was registered. Notices were issued to both parties. Consequent upon notice both parties appeared and filed respective pleadings. The second party workman filed his statement of claim at Ext. 5 and the management of Air India Ltd. (first party) filed its written statement at Ext 7.

3. Case of the second party is that he had been working with Air India as Peon-cum-handyman from September, 1981, but the management of first party did not issue appointment letter with pay fixation up to 1985. In the year 1984 the workman was given a personal datasheet/ application blank which was sent to the office of first party after duly filled in by the workman. Thereafter the first party gave periodical appointments orders for 3 months without giving break in service for one year. Subsequently the first party terminated the service of the workman without giving him any notice, notice pay or retrenchment compensation and without following any procedure laid down in the Industrial Dispute Act, 1947. Further case is that the workman completed 240 days in service practically in each year of his work prior to issuance of appointment orders of periodical nature. And even after issuance of periodical letters and on the date of termination on 31-7-1987 the workman had completed service more than 240 days every year. Further case is that his job and post and his work were of permanent nature. Further case is that he was paid wages on vouchers and pay slip was not issued by the management of first party though the workman remain continuing work on regular basis. Further case is that the termination of the workman is violation to the mandatory provisions of Section 25 (F), 25 (G), 25 (H) of the Industrial Disputes Act, 1947 and the workman has learnt that after termination of his service other workman were taken in service without giving him any opportunity for reemployment. His further case is that the workman had raised Industrial Dispute but the Appropriate Government did not make any reference then challenged order of the Appropriate Government before the Hon'ble Gujarat High Court and in LPA No. 744/1995 subject to condition of waiving back wages for the past then direction was given to the Appropriate Government for making reference and thereafter the Appropriate Government make reference for adjudication. On these scores the workman waiving as to right of any back wages for the past period and prayed for the relief to quash and set aside the order of his termination of service and for granting reinstatement in service with consequential benefits and back wages from the date of reference and also for cost of the case and to any other relief to which the workman is found entitled.

4. The first party pleaded inter-alia in its written statement that the reference is not maintainable since the second party workman was appointed as casual peon/handyman on temporary basis for fixed tenure and by efflux of time, service of the second party workman came to an end automatically and so it is not a retrenchment as

described under section 2 (oo) of the I.D. Act, 1947 and so he cannot raise an Industrial Dispute within meaning of Section 2 (K) of the I.D. Act. Further case is that the workman (second party) who was terminated from 31 July, 1986 has raised Industrial Dispute for the 1st time in July, 1990 and the reference was denied to him by the order passed by the Appropriate Authority in September, 1993. The workman thereafter slept over his right prior to agitating before the Hon'ble Gujarat High Court by filing writ petition as SCA No. 227/1995 which was filed on 1 December, 1994 without giving any explanation inordinate delay and the SCA No. 227/95 was dismissal by order dated 15-2-1995 then against order dated 15-2-1995 passed by the Learned Single Judge it was challenged in LPA No. 744/95 before Division Bench and then LPA was allowed vide order dated 20-8-96 by quashing and setting aside the order passed by the Appropriate Authority refusing to refer the dispute to the Tribunal and while directing. So, the Hon'ble Gujarat High Court had recorded a statement made by the Learned Counsel appearing on behalf of the second party workman "In the event tribunal decides the reference in favour of Appellant, the appellant would not claim back wages and would be content with the wages from the date of his reinstatement in the event it is so ordered". Further Case is that in the statement of claim the workman has prayed for relief of grant of back wages from the alleged date of termination till reinstatement if order. Further case of the first party is that the second party workman has not completed 240 days of works in any year prior to his alleged termination and so the provision of section 25 (F), 25 (G), 25 (H) are not attracted. The case of the first party is that the workman was appointed as temporary handyman-cum-peon for specified period and on purely adhoc basis. On expiration of period mentioned in the appointment order it is automatically break about the termination of service. The appointment given to the workman was purely on temporary basis and that too for a fixed period same would not amount to rejection as it would be covered by exception (bb) to section 2 (oo) and alleged non compliance of section 25 (F), I.D. Act would not render such automatic termination of workman as illegal and no relief could be granted to the workman and so the reference deserves to be dismissed. The first party has also denied the averments and allegations made in paras 1 to 10 of the statement of claim against management of first party.

5. In view of rival contention of the parties in their pleadings the following issues are taken up for determination in this case.

ISSUES

(I) Whether the reference is maintainable ?

(II) Has the workman (second party) got valid cause of action ?

(III) Whether the workman (second party) completed 240 days of work in calendar year preceding his termination w.e.f. 31-7-1986 ?

(IV) Whether the periodical appointment of the second party made by the first party was for a specified period mention in the appointment order that tantamount to automatic termination of service covered under section 2 (oo) (bb) of the I.D. Act?

(V) Whether the second party (workman) is entitled to get relief as claimed ?

(VI) What orders are to be passed ?

FINDINGS

6) ISSUES NO. III AND IV

The second party vide Ext. 8 demanded certain documents from the first party viz attendance register from September, 1981 till the date of termination and service record till date. The first party had filed the reply at Ext. 13. Thereafter hearing the parties on Ext. 8 and 13 this tribunal passed the order on Ext. 8 dated 10-9-2005 that the second party shall submit an affidavit in support of Ext. 8 within 15 days of the receipt of this order. After the application by the second party the hearing will be made on 21-1-2005 such order was passed at Ext. 8. The second party filed fresh application on 18-2-2010 as per the order the said application was though time barred, this tribunal again passed an order on 10-5-2010 directed the first party to produce the appointment letters of the second party and rest of the demands as per Ext. 8 were rejected on the ground of delay.

7. Thereafter the second party leads oral evidence and the workman himself deposed on oath and stated in examination-in-chief that he joined with first party in September, 1981 and was terminated on 21-9-1987. Further deposed that he tried to secure job elsewhere but could not get any job and he is unemployed. Further admitted that he maintain his family by doing labour work. In cross-examination the workman admitted that his service was terminated in 1987 and he raised dispute in 1991. Also admitted that he has produced the orders given by the first party regarding his employment which are for 29/29 days he admitted that after expiry of employment order on 31-9-1987 first party did not give him any further order of employment. The workman also admitted during cross-examination that he was called for interview along with other candidates but no one was declared passed in the interview and so nobody was given employment order. As per terms of reference, the alleged termination of the workman is said to be 31-7-1987, whereas the workman in his deposition has stated the date of termination on 21-9-1987. Had it been admitted that he was terminated on 21-9-1987/31-9-1987 then the present reference will become premature because at the time of reference he was in

employment with the first party. Further on making scrutiny to the oral evidence of the workman it does not appear that the workman has clearly stated that he completed 240 days of work in any calendar year though there is such saying in the statement of claim but the workman in his evidence has not stated about completing 240 days in any calendar year. On the contrary the workman in cross-examination has admitted that he has produced the orders given by the first party regarding his employment which are for 29/29 days. Said appointment orders are produced by the second party vide list at Ext. 16 and those appointment's orders have been given pakka. Exhibits 25 to 29. On perusal of exhibits 25 to 29 which are the appointment orders it transpires that each order is for 29 days. Altogether 5 orders have been produced by the second party that go to show on calculation of working days $29 \text{ days} \times 5 \text{ days} = 145 \text{ days}$ during his entire tenure. That itself go to disprove the case of the second party workman that he ever completed 240 days of service in a calendar year preceding his termination on 31-7-1987. The first party has not lead any oral evidence rather have relied upon at Ext. 25 to 29 produced by the second party. The first party has come with clear pleadings that periodical 29 days appointment order had been given to the workman and on expiry of the 29 days the service of the workman automatically came to an end due to non-renewal of his service in continuity. Ext. 23 is certificate granted by the first party dated 20-3-1984 that go to show that the workman Mahesh R. Kanodia was working with the first party on purely casual basis from September, 1981 there is no connectivity that right from September, 1981 up to his termination on 31-7-1987 he continued works. Ext. 24 is the letter dated 3 May, 1984 issued to the workman Mahesh R. Kanodia on the subject recruitment of handyman-cum-peon at Ahmedabad which was sent for reference to the workman's application dated nil for the above post. As per admission of the workman in his evidence at Ext. 22 during cross-examination, he had applied for the post handyman-cum-peon but he was not successful in interview rather other applicants who had applied were also not succeeded in the interview and none of them was recruited. Ext. 25 is dated 5-7-1985 which is the order regarding extension of service of the workman up to 27 July, 1985. Ext. 26 is the appointment order by which the workman was temporarily appointed from June 1, 1985 to June 30, 1985. Ext. 27 is another appointment order through which the workman was appointed from August 2, 1985 to August 31, 1985. Ext. 28 is another appointment order through which the workman (second party) was appointed for a period of 80 days w.e.f. January 1, 1986 to March 21, 1986. Ext. 29 is yet another appointment order through which the workman was temporarily appointed as peon-cum-handyman for a period of one month w.e.f. 20 June, 1986 to 19 July, 1986 so these appointment orders have no any connectivity for continuation of service of the workman. More so, on calculation of the days of work it does not appear that in any calendar year the workman completed

240 days of work. On the other hand Ext. 25 to 29 go to show that the appointment of the workman was only for a term/tenure period and on expiry of the term/tenure his service was come to an end. Under Section 2 (oo) the word retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.

From perusal of Ext. 25 to 29 which are short term appointments orders, it is evident that the appointment of the workman by the management of Air India had been made for short term period that was being expired on the last date of contract and there was no renewal of the contract of appointment in continuity rether their had been issued of such short term appointments orders at intervals during the span of period 85 to 87 and so the appointment orders issued to the workman was coming to automatic end/termination of service that covers under Section 2 (oo) (bb) of the I.D. Act. Whereas there is no any cogent evidence to show that the workman ever completed 240 days of works in calendar year particularly in calendar year preceding his so called termination w.e.f. 31-7-1986. The second party workman has failed to prove that he completed 240 days of work in any calendar year. In such view of the matter there was no any requirement for issuing notice, or notice pay or retrenchment compensation under Section 25 (F) of the I.D. Act.

8. Upon consideration of the case law relied upon by the second party (1) Hon'ble Supreme Court order passed in Civil Appeal No. 2585 of 2006 in the case of Bhilwara Dugdh Utpadak Sahakari S. Ltd. V/s Vinod Kumar Sharma and Others dated 1-9-2011, (2) in the case of S.G. Chemicals and Dyes Trading Employees Union and S.G. Chemicals and Dyes Trading Limited and Another 1986 LLJ Supreme Court 490, (3) in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. V/s. R.G. Sharma and Others 2002-I-LLJ Supreme Court, 834, are not applicable in the instant case to support the case of the workman. On the other hand the case law relied upon by the first party the case of Manjulaben Kalabhai Zinzuwadiya V/s. Gujarat Water Supply & Sewerage Board (2009) 1 CLR 375 Gujarat High Court, 2 2006 (108) FLR 699 in the case of Aayurvedic Officer V/s Jayram Bhai H. Vala and (3) the case law 2008 (1)

CLR 612 in the case of Husenabibi Ahmadbai Maniar are fit to be applicable in the facts and circumstances of the case that the appointment of the workman was for a short term/tenure appointment that automatically come to end on the last day and that in such mode of appointment there is no need for issuing notice or notice pay or providing retrenchment compensation under Section 25(F) of the I.D. Act.

9. Thus upon consideration of the material on the record and also the case relied upon by the first party which are fit in the instant case, I find and hold that the workman second party has not completed 240 days of work in calendar year preceding his termination w.e.f. 31-7-1986. I further find and hold that the periodical appointment of the workman second party made by the first party was for a specified period mentioned in the appointment order itself tantamount to automatic termination of service which attracts the provision under Section 2 (oo) (bb) of the I.D. Act, 1947. Accordingly issue No. III is decided against the second party and issue no. IV is decided in favour of the first party.

10. ISSUE NO. V

In view of the findings given to issue No. III & IV in the foregoing, I am of the considered opinion that the second party workman in this case is not entitled to get relief of reinstatement with or without back wages or any other benefits. Likewise second party workman is not entitled for any compensation instead of reinstatement because of having no any violation of the provision of Section 25 (F) of the I.D. Act by the management of first party. This issue is accordingly decided in negative.

11. ISSUE NO. I, II & VI

As per discussion made above and in view of the findings given to issue No. III, IV & V in the foregoing, I further find and hold that this reference is not maintainable and the workman (second party) has no valid cause of action and that he is not entitled to get any relief. In the result this reference is dismissed on contest. No order as to any cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.आ. 2623.—औद्योगिक विधाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विधाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 51/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/40/2011-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 20th July, 2012

S.O. 2623.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 51/2011) of the Central Government Industrial Tribunal/Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 20-7-2012.

[No. L-12012/40/2011-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/S 10 (1) (d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 51 of 2011

Parties:

Employers in relation to the management of Central Bank of India, Regional Office.

AND

Their workman

Present: Shri H.M. SINGH, Presiding Officer

APPEARANCES:

For the Employers : None

For the Workman : Shri B. Prasad,
Authorised Representative.

State : Bihar

Industry : Bank

Dated, the —————— 2012

AWARD

By Order No. L-12012/40/2011-IR (B-II) dated 11-11-2011 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

“Whether the action of the management of Central Bank of India, Regional Office, Purnes, in terminating the services of Sri Arun Kumar Sah, Part Time Sweeper/Peon w.e.f. 17-8-2009 is legal and justified ? What relief the concerned workman is entitled to ??”

2. The case of the concerned workman is that he was appointed by the management of Central Bank of India to discharge the duties of a part-time sweeper/peon at Sema

Pur Branch, Katihar from 1-10-1994. He used to discharge the duties of opening of Bank's gate, sweeping, cleaning the branch premises, latrines, bathroom, clearing the tables, chairs, desks, counters; taking out ledgers, registers from the almirah, placing the same on counters /tables and vice-versa; taking out Cash Box from strong room in the Cash Deptt. whenever required, carrying token book, scroll register from Cash Deptt. to Accounts Deptt. and vice-versa; posting of mails, distribution of dak through peon book; Serving tea, water to members of staff and customers and any other sundry job as per the instruction of his superior. He used to discharge the above duties as per the instructions of the Branch Manager and other superiors of the Branch. The workman used to discharge his duties from 9.30 A. M. to 6 P.M. regularly on week days and from 9-30 A.M. to 3 P.M. on saturdays and sometimes even beyond that as per the instruction of the Branch Manager. The workman was paid his wages through debit vouchers initially @ Rs. 5 per day which was subsequently raised to @ Rs. 7, Rs. 10, Rs. 15, Rs. 20, Rs. 25 and lastly Rs. 35 per day. The Safai Karmachari of the Bank's Sema Pur Branch had been promoted as a clerk in 2003 and the post fell vacant accordingly. While working for a longer period, the workman had represented to the management for his regularisation as Sweeper/Peon but his case was not considered by the management. On 14-8-2009 the concerned workman was informed by the Bank that his services were no longer required and the same stood terminated from the following day. He worked with the Bank from 1-10-1994 to 14-8-2009 uninterruptedly and also worked for more than 240 days in 12 calendar months preceding his termination. The termination of the workman is covered under Section 2(oo) of the I.D. Act, 1947. The action of the management in terminating the services of the concerned workman w.e.f. 17-8-2009 is neither legal nor justified.

Under such circumstances it has been preyed that the Hon'ble Tribunal be pleased to pass an award by directing the management to reinstate the concerned workman as a Temporary Sweeper/Peon with full back wages and to regularise his service as a Part-time Sweeper/Peon with effect from 17-8-2009.

3. The case of the management of Central Bank of India is that the management never terminated the services of the concerned workman, Arun Kumar Sah. For sometime Arun Kumar Sah worked as Part-time casual worker for serving tea and water. He was engaged part-time contract basis and he was paid daily wages on the date of engagement. He was not engaged by the competent person. He was never engaged continuously nor put 240 days attendance in any calendar year. His demand for reinstatement and back wages is neither legal nor justified.

It has been prayed that the Hon'ble Tribunal be pleased to hold that the action of the management in

terminating the services of Arun Kumar Sah, Part-time Sweeper/Peon w.e.f. 17-8-2009 is legal and justified and the concerned person is not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statements.

5. The concerned workman produced himself as WW-1 (Arun Kumar sah).

The date was fixed for adducing evidence by the management, but no evidence has been produced by the management.

Registered notice was sent to the management for appearance in this case and for filing written statement. One authorisation was filed by the Chief Manager, Central Bank of India, Regional Office, Purnea, on 10-2-2012 in favour of Sri Lalan Kumar Singh, Asst. Manager, HRD to appear before the Court, though the Chief Manager is not party. The Regional Manager has not authorised any person nor he has appeared himself to contest the case. Another authorisation was filed by unauthorised person, Sr. Manager, in favour of Sri R.S. Sahay, Manager, on 23-9-2012. The Sr. Manager was not party to the case to authorise any person to contest the case. So, it shows that neither the management appeared himself nor has authorise any person to appear in the case on behalf of the Regional Manager. An application was moved on behalf of Sri R.S. Sahay, Branch Manager, Central Bank of India, on 21-6-2012 when the case was heard and evidence of the management was closed. The application was moved on 1-30 P.M. that he was unable to attend the court in time. The above application was also by unauthorised person. So, no cognizance can be taken in such type of application.

7. Heard argument of workman representative and perused the record. Written argument filed by the management is also perused.

It has been argued on behalf of the workman that he worked with the management as part-Time Sweeper/Peon from 1-10-1994 to 14-8-2009 and he used to work from 9 A.M. to 6 P.M. In this respect he has filed documents, such as, certificate dated 20-8-2008 issued by Branch Manager, Semapur Branch stating that he has worked more than ten years on daily basis as Sweeper and other documents have been filed on behalf of the workman are payment vouchers and other documents by the management from time to time. Attendance sheets show that he has worked for more than 240 days in a calendar year. It shows that the Bank management has terminated his service without affording any opportunity and he has performed his duty as Sweeper as well as Messenger of the Bank in Subordinate Cadre.

8. Considering the above facts and circumstances, I hold that the action of the management of Central Bank of

India, Regional Office, Purnea, in terminating the services of Sri Arun Kumar Sah, Part-Time Sweeper/Peon w.e.f. 17-8-2009 is not legal and justified. Hence, the concerned workman is entitled to be re-instated in service of the Bank and regularised as Part-Time Sweeper/Peon with 50% back wages and other consequential benefits. The management is directed to implement the award within 30 days from the date of publication of the award in the Gazette of India.

H. M. SINGH, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.आ. 2624.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 2/12 एवं 12/12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/101/2011-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 20th July, 2012

S. O. 2624.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/12 and 12/12) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workmen which was received by the Central Government on 20-7-2012.

[No. L-12012/101/2011-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/S 10 (1) (d) (2A) of the
Industrial Disputes Act, 1947

Reference No. 2 of 2012

Along with Reference No. 12 of 2012

Parties:

Employers in relation to the management of Bank of India, Patna.

AND

Their workman

Present: Shri H.M SINGH, Presiding Officer

APPEARANCES:

For the Employers : Shri Nishant, Manager (I.R.)
For the Workman : Shri B. Prasad,
Authorised representative.

State: Bihar

Industry : Bank

Dated, the 2-7-2012

AWARD

By Order No. L-12012/101/2011-IR (B-II) dated 19-1-2012 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Bank of India, Patna in imposing the punishment of removal from service with superannuation benefits upon Sh. Rajesh Kumar, Clerk, Sagahi Branch, Dist Gaya w.e.f. 25-1-2010 is legal and justified ? What relief the workmen is entitled to?"

2. On the prayer of both the parties Reference Case No. 12 of 2012 has been amalgamated with the I.D. No. 2 of 2012, as the facts of both the cases are same and similar in nature. Accordingly, both the cases have been heard together and a common award is being passed.

3. The case of the concerned workman is that he was appointed as a peon under subordinate cadre and was posted at Bhandra Branch, Giridih w.e.f. 25-4-97. On transfer, he joined at Koshila Branch, Gaya on 12-6-2000. As per the provision of the Promotion Policy of the Bank, he was promoted from Subordinate Cadre to Clerical Cadre and was posted at Sagahi Branch on 21-9-2007. While working at Bagahi Branch, the workman was placed under suspension vide order dated 8-12-2008 without affording any opportunity for explaining his conduct. He was issued a Memo calling for his explanation vide order dated 22-12-2008 which was properly replied by him. The concerned workman was issued a charge-sheet dated 15-4-2009 and without considering his reply, it was decided to hold domestic enquiry and for that the Enquiry Officer as well as the Presenting Officer were appointed. The Enquiry Officer conducted the Enquiry ignoring the Rules of Evidence. The enquiry was not conducted fairly and properly, the Enquiry Officer prepared his findings on the basis of conjectures and surmises and has got no sound foundation. The concerned workman submitted his comments on the findings of the Enquiry Officer but the points raised by the workman were not considered by the Disciplinary Authority, and he proposed to impose the punishment of Compulsory Retirement from the services of the Bank. The concerned workman appeared before the Disciplinary Authority during the course of personal hearing and submitted the correct position and prayed for

not imposing the above punishment. The concerned workman preferred an appeal against the impugned order before the Appellate Authority who also acted with closed mind and without proper application of mind up held the punishment of compulsory retirement vide order dated 13-4-2010.

The action of the management in imposing the punishment of compulsory retirement from the service of the Bank on the workman is neither legal nor justified.

It has been prayed that the Hon'ble Tribunal be pleased to pass an award by setting aside the order of punishment of compulsory retirement from the services of the Bank imposed on the concerned workman and by directing the management to reinstate the concerned workman in service of the Bank with all consequential benefits.

4. The case of the management is that Sri Rajesh Kumar was appointed as a Peon under Subordinate Cadre at Bhandra Branch, Giridih and later was posted at Koshila Branch, Gaya. After his promotion from Subordinate Cadre to Clerical Cadre he was posted at Sagahi Branch on 21-9-2007. During the course of his posting at Sagahi Branch a complaint dated 10-11-2008 was received from Smt. Gita Devi, account-holder of S.B. A/c No. 3894 at Sagahi Branch by the Branch Manager wherein she had complained about non-deposit of Rs. 5,500 in her S.B. A/c deposit, she had deposited the money to the Cashier and received a counterfoil from him. Later another complaint letter dated 25-11-2008 of Sri Narendra Kumar having S.B. A/c No. 3100 with Sagahi Branch was also received by the Branch Manager wherein it was alleged that an amount of Rs. 14,000 was not deposited in his aforesaid account despite he had deposited the said amount and was issued a counterfoil by the Cashier. The complaint made by the aforesaid customers prima facie shows misappropriation of their money by the Bank Staff who had received the said amount from the customer. The concerned workman was placed under suspension vide order dated 8-12-2008. The reply submitted by the concerned workman was not found satisfactory. Therefore, a chargesheet was issued to him and the Enquiry Officer was appointed by the Disciplinary Authority to conduct the department enquiry. The Presenting Officer was appointed to present case on behalf of the management. The Enquiry Officer conducted the enquiry in a fair manner and gave full opportunity the workman as well as Presenting Officer to present their case. The Enquiry Officer conducted the enquiry as per principles of natural justice and provisions of Bipartite Settlement. The Disciplinary Authority concurred with the finding of the Enquiry Officer. The charges proved against the workmen were quite serious and shows dishonesty and lack of integrity on his part, hence the Disciplinary Authority found that continuing the services of the workman in the Bank shall be risky proposition, hence, he proposed the

punishment of Compulsory Retirement in the Show Cause Punishment Notice and provided one more opportunity by way of personal hearing to the workman to submit the submission in person. The Disciplinary Authority had passed the punishment order after application of his mind and analysis of the evidences produced during the course of enquiry. The appeal preferred by the workman was entertained by the Appellate Authority and did not find merit in the contentions of the workman and found that the findings of the Enquiry Officer correct and he confirmed the penalty order passed by the Disciplinary Authority. The action of the management in imposing the punishment of Compulsory Retirement from the services of the Bank on the workman is legal and justified.

It has been prayed that the Hon'ble tribunal be pleased to hold that the action of the management in imposing the punishment of compulsory retirement from service of the Bank on the workman legal and justify and the concerned workman is not entitled to any relief.

5. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

6. The domestic enquiry was held to be not fair and proper vide order dated 25-5-2012. Registered notice was sent to the management fixing the date on 21-6-2012 for adducing evidence, failing which argument would be heard.

On that neither evidence was adduced nor argument was advanced on behalf of the management.

Argument was heard on behalf of the concerned workman.

In the present case the Zonal Manager, Bank of India, is the management. He has not appointed any person nor any representative came to contest the case. One person, Sri R.N.Lal, Dy. Zonal Manager, authorised Shri Nishant, Manager (I.R.), Bank of India, Zonal Office Patna, to represent the management's case. Sri R.N. Lal is not a party in the case nor he has any authority to nominate or authorise any person to represent the case because only the Zonal Manager is the party to the case who can authorise any person to represent the case.

7. Main argument advanced on behalf of the concerned workman is that the witnesses on which basis the concerned workman compulsorily retired from the services of the Bank, have not supported the management's case because Smt. Geeta Devi, S. B. A/c. 3894 was complainant and Narendra Kumar, Jt. A/c. S.B. 3100 was also complainant. They have not been examined in the domestic enquiry proceedings, they were complainants. On their complaints the charge-sheet was issued to the concerned workman. But they have not been examined, rather they have supported the concerned workman. Ext. M-26 is written by Narendra Kumar which has been

addressed to the Enquiry Officer, Sri Sanjay Kumar that he had no complaint against the concerned workman with the Bank of India, Sagahi Branch. He stated that the complaint had been lodged on the basis of initiative of the Branch Manager. Ext. M-27 is the letter addressed to Sri Sanjay Kumar, Enquiry Officer, by Smt. Geeta Devi. In para 2 she had stated that I had lodged the complaint on the direction of the Manager, Sagahi Branch. In para 3 she stated—I had lodged complaint out of misunderstanding. I am an illiterate woman and some of my men had caused the complaint due to misunderstanding which should be cancelled.

On the basis of these complaints the concerned workman was compulsorily retired from the Bank's service.

MW-1, Sanjay Kumar, has stated in his cross-examination that the enquiry was held at Zonal Office on telephonic request of the charg-sheeted employee. MW-2, Subhash Choudhary, has stated in his cross-examination that the name of borrowers were Geeta Devi and Narendra Kumar. I went to their house to call them for evidence. They did not turn up for the evidence. They were contacted through the Branch Manager who informed that they were not willing to come to Patna for evidence and they did not turn up. Sagahi Branch is about 125 K.M. away from Patna.

The evidence of the complainant, Nagendra Kumar shows that the complaint had been lodged on the basis of initiative of the Branch Manager. He had written a letter to Sri Sanjay Kumar, Enquiry Officer dated 9-8-2009, who stated that your evidence will be taken in favour of the Bank. he denied the same. So, his evidence was not recorded. Smt. Gita Devi in her evidence also stated that she will not support the management's case.

So, retiring compulsorily the concerned workman from the service of the Bank, without supporting by complaints on which basis he was suspended and later compulsorily retired from service does not find following the principle of natural justice.

8. In the result, I hold that the action of the management of Bank of India in imposing punishment of compulsory retirement from the service of the Bank, on Sri Rajesh Kumar, Clerk, Sagahi Branch is not legal and justified. So, he is entitled for reinstatement in service with 50 % back wages and other consequential benefits. The management is directed to implement the award within 30 days from the date of publication of the award in the Gazette of India.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.अ. 2625.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 74/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/20/2006-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

—New Delhi, the 20th July, 2012

S. O. 2625.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 74/2006) of the Central Government Industrial Tribunal/Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 20-07-2012.

[No. L-12012/20/2006-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s. 10(1)(d) (2A) of the
Industrial Disputes Act, 1947

Reference No. 74 of 2006

Parties : Employers in relation to the management of
Bank of India

AND

Their Workmen

Present : Shri H. M. SINGH, Presiding Officer

Appearances :

For the Employers : Shri D. K. Verma, Advocate

For the Workman : Shri D. Mukherjee, Advocate

State : Jharkhand Industry : Bank

Dated, the 4-7-2012.

AWARD

By Order No. L-12012/20/2006-IR (B-II) dated 2-6-2006 the Central Government, in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Zonal Manager, Giridih Zone, Bank of India in discharging Sri Raj Kumar Jha, Staff Subordinate from the Services of the Bank is legal, justified and proportionate to the fault/omission ? If not, what relief the concerned workman is entitled to?"

2. The case of the concerned workman is that the name of the concerned workman was sponsored from Employment Exchange for the post of Subordinate Staff. He was interviewed and selected for the post and he was appointed by a letter of appointment dated 2-7-1997. He joined his duty on 5-7-1977. Prior to his joining duty he produced certificates required by the management, such as, educational qualification certificate, date of birth certificate or school leaving certificate; character certificate issued by the competent authority in the prescribed format; caste certificate and six copies of recent photographs. After completion of probationary period successfully he was confirmed by order dated 5-1-1998. The workman under the terms of appointment had completed the period of probation of six months successfully and he was confirmed in his service by the Bank w.e.f. 5-1-1998. After more than three years of the continuation of the workman in service during which he was not only confirmed but also given the annual increments regularly, the Bank all of a sudden issued a chargesheet dated 28-9-2002 on the ground that the actual name of the workman is Vivek Chandra Jha and the school leaving certificate produced by him is forged as the same is issued by non-existent school. It has been further alleged that in the application the name of relative working in the Bank not mentioned. The concerned workmen replied to the chargesheet denying the charges emphatically. Inspite of the same the management appointed an Enquiry Officer to conduct the enquiry. After conducting enquiry the Enquiry Officer submitted his enquiry report dated 9-6-2003 to the Disciplinary Authority. The Enquiry Officer in his enquiry report while dealing with the first part of the charge as to whether Indira Janjatiya Uchcha Vidyalaya Godda in which the workman had undergone schooling and had produced its transfer certificate was a non-existent/non-descript school, had concluded that Indira Janjatiya Uchcha Vidyalaya Godda was very much in existence and the certificates issued to workman by the school were genuine and hence the charge of school leaving certificate submitted by the workman alleged to be forged and reportedly issued by a non-existent/non-descript school was not proved. Similarly while dealing with the secord part of the charge against the workman as to whether the real name of workman was Vivek Chandra Jha and not Raj Kumar Jha, the Enquiry Officer on the basis of the documentary evidences and witnesses examined before him came to the conclusion that the charge that Raj Kumar Jha is a real name was/is Vivek Chandra was also not proved. Charge No. 3 was that though in the application he had mentioned the name of Sri Sudhir

Chandra Jha but in the column he has not mentioned the same as his brother, so according to Enquiry Officer, Charge No. 3 is proved. It has been submitted that the appointment was made from the open market through Employment Exchange and through interview and test. The appointment was not made on the basis of relative of any person, so the Charge No. 3 is neither a misconduct nor the same is serious. The Disciplinary Authority issued a show cause notice proposing to discharge the concerned workman from service by order dated 7-10-2004. The discharge of the concerned workman is illegal and void-ab initio as the charge levelled in the chargesheet were not proved during course of enquiry and the discharge of the concerned workman is too harsh and disproportionate to the alleged charges.

Under such circumstances it has been prayed that the Hon'ble Tribunal be pleased to render an award holding that the action of the management in discharging Raj Kumar Jha, concerned workman, from the service of the Bank is illegal, unjustified and also disproportionate to the fault/omission and he is entitled for reinstatement with full back wages and consequential benefits.

3. The case of the management is that the concerned workman vide his application dated 12-5-1997 seeking employment for the post of subordinate staff in the Bank, stated that he had passed 9th Class, accordingly submitted school leaving certificate/transfer certificate from Head Master, Indira Jan Jatiya Uchcha Vidyalaya, Godda under the false identity of Raj Kumar Jha. Subsequently on verification from the local people, co-villagers, Surpunch etc. It was revealed that his real name is Vivek Chandra Jha and the school leaving certificate/transfer certificate submitted by him in support of his identity as Raj Kumar Jha appears to have been entailed from the school which has became defunct several years ago and as such are forged. He mentioned in his application with ulterior motive to hide his real identity that none of his relative is working in Bank of India, although he had mentioned Sudhir Chandra Jha as one of his brothers in the application. On verification it was found that the said Sudhir Chandra Jha is working as clerk in the Bank's Dwarpati Branch, Giridih Zone. Accordingly, he has suppressed the material facts leading to making a false information in his application. Accordingly the concerned workman obtained the job in the Bank in false name by submitting some certificates obtained from defunct school, such as school leaving certificate/transfer certificate etc. The above act of gaining employment in the Bank on wrong identity by the concerned workman is a gross misconduct under para 5(m) of the Bipartite Settlement dated 10-4-2002. The management issued a Charge-sheet dated 28-9-2002 for his gross misconduct. The management appointed Shri Ramesh Prasad, the then Staff Officer, Manager, Phusro Bazar Branch as Enquiry Officer to conduct domestic enquiry in respect of aforesaid charge-sheet. The Enquiry Officer conducted domestic enquiry in presence of

workman concerned in accordance with the principles of natural justice. The concerned workman appointed Shri Umesh Kumar Das as his defence representative. During the enquiry the Enquiry Officer gave full opportunity to the concerned workman to defend himself. The management's witnesses were examined in presence of workman concerned and they were cross-examined by the defence representative of the concerned workman. The concerned workman was also allowed to produce witness in his defence and also to cross-examine the management witness. The Enquiry Officer submitted his report dated 9-6-2003 to the disciplinary authority. The finding of the Enquiry Officer is quoted below for ready reference.

- (a) that the Indira Jan Jatiya Uchha Vidyalaya, Godda did exist and the certificates issued to Sri Raj Kumar Jha by the school are genuine ones. Hence the charge that school leaving/transfer certificate submitted by Sri Raj Kumr Jha was forged one and reportedly issued by a non-existence/non-descript school, is not proved;
- (b) that the charge that Sri Raj Kumar Jha's real name is Vivek Chandra Jha, is not proved;
- (c) that Sri Raj Kumar Jha has suppressed the name of his brother, Sri Sudhir Chandra Jha in his application dated 12-5-1997 is proved.

The Disciplinary Authority had found that the inference and conclusion of the Enquiry Officer were not based on proper evaluation of the material on the enquiry record. The disciplinary authority submitted his substituted findings giving cogent reason of differing from the finding of the Enquiry Officer based on scrutiny of material/records such as documents produced/statement of witnesses adduced during the enquiry. The disciplinary authority felt that it is not desirable to continue the workman concerned in the services of the Bank, therefore, it was proposed to discharge him from the services of the Bank in term of para 12 of Bipartite Settlement dated 10-4-2002 and accordingly the disciplinary authority issued a show cause notice dated 27-7-2004 to the workman concerned affording him an opportunity of personal hearing on 7-8-2004 to make his submission. The concerned workman participated in personal hearing on 7-8-2004 along with his defence representative and submitted his representation. The Disciplinary Authority after hearing the workman concerned passed reasoned order vide his order dated 7-10-2004 and discharged the concerned workman from Bank's service with immediate effect, since the basis ingredient of honesty/integrity found proved doubtful. The discharge of the concerned workman from the services of the Bank is legal, justified and proportionate to the fault/omission.

It has been prayed that the Hon'ble Tribunal be pleased to hold that the action of the management is legal and justified and the concerned workman is not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The management produced MW-1, Dipak Kumar Guha and documents have been marked as Exts. M-1 to M-13 on formal proof being dispensed with Enquiry was held to be fair and proper on 13-3-12.

6. Main argument advanced on behalf of the concerned workman is that the name of the concerned workman was called for from the Employment Exchange in the year 1993 and he was interviewed and selected and appointment letter was issued on 2-7-1997 and he joined his duty on 5-7-1997. After completion of probationary period successfully he was confirmed by order dated 5-1-1998. The management issued a chargesheet on 28-9-2002 on the ground that the actual name of the workman is Vivek Chandra Jha and the school leaving certificate produced by him is forged as the same issued by non-existent school. It is further alleged that in the application the name of relative working in the Bank not mentioned. No replied to the charge-sheet denying the charges. The management appointed Enquiry Officer to conduct the enquiry. On completion of enquiry the Enquiry Officer submitted report on 9-6-2003 holding that Charge No. 1 i.e. his actual name is Vivek Jha and not Raj Kumar Jha is not proved. The Enquiry Officer on the basis of positive oral and documentary evidence held that the real name of the concerned workman is Raj Kumar Jha. Regarding Charge No. 2 the finding of the Enquiry Officer is that the school leaving certificate is genuine and the school is in existence, so, he held that the Charge No. 2 also not proved. Regarding Charge No. 3 the finding of the Enquiry Officer is that though in the application he had mentioned the name of Sri Sudhir Chandra Jha but in the column he has not mentioned the same as his brother, so according to Enquiry Officer Charge No. 3 is proved.

In this respect management argued that the concerned workman obtained the job in the Bank in false name by submitting school leaving certificate. On verification, it was revealed that his real name is Vivek Chandra Jha and the school leaving certificate submitted by him was forged one. During the enquiry, the villagers of the workman concerned clearly mentioned that the name of the concerned workman is Vivek Chandra Jha and not Raj Kumar Jha. The above act of the concerned workman is a gross misconduct under the Bipartite Settlement dated 10-4-2002. The disciplinary authority has legal right to differ from the finding of the enquiry officer. There is no illegality in dismissing the workman concerned.

Management's witness, Sri Dipak Kumar Guha, has stated in examination-in-chief that I was the appellate authority and Mr. Vergab was the disciplinary authority. In his cross-examination he stated that two charges regarding identity and qualification were not proved. The evidence was not conclusive enough, the undersigned did not deem it fit to substitute the findings of the enquiry.

Before 27-7-2004 I did not write any letter to the concerned workman stating therein the detailed reason for differing with the reason given by the Enquiry Officer. In 2003 I was designated as Appointing Authority and Appellate Authority. The appellate authority is always higher in rank than the appointing authority. The then disciplinary authority who was junior to me was transferred I acted as a disciplinary authority in the matter. I can file the document to show that in 2004 I was delegated with the power of disciplinary authority in the absence of the then disciplinary authority. Management enquired from the District Authority about the identity of the concerned workman and the same was confirmed by the District Authority by letter dated 24-12-2004 (Ext. W-1).

7. On behalf of the concerned workman 2000 (I) LLN. 39 has been referred in which Hon'ble Supreme Court laid down—"Constitution of India, Art. 309—Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, rule 2—Departmental enquiry—Report of enquiry officer favourable to charged employee—Findings of enquiry officer reversed by disciplinary authority—Procedure to be followed by disciplinary authority—Held, charged employee should be given an opportunity of hearing before reversing the findings of enquiry officer—Opportunity of hearing being a constitutional right has to be read into a rule which does not make a specific provision to this effect."

Another law referred by the workman is 2005(105) FLR 1153 in which Hon'ble Patna High Court laid down—"Service—Enquiry Officer exonerating the employee of all the charges—Disciplinary Authority has a right to differ with the report of the Enquiry Officer—But only after recording reasons and giving opportunity to the employee concerned to show cause against recording a different finding—Issuing a show cause notice (Second) after reversing the finding of Enquiry Officer—Against well established procedure—Apex Court Judgement in Punjab National Bank V. Kunj Behari Mishra, relied upon—Punishment imposed in above manner quashed—Petition allowed."

Another law referred is 2011(1) JIJR 36 in which Hon'ble Supreme Court laid down—

"Banking Laws—Departmental enquiry—bank employee removed from service following departmental enquiry—Disciplinary Authority differing with findings of enquiry officer—Bank's Service Regulations prescribing for Disciplinary Authority to record reasons for disagreement with findings of enquiry officer and furnishing the same alongwith enquiry report to delinquent employee—such requirements not followed by Disciplinary Authority—Regulations are required to be followed in letter and spirit—non-supply of enquiry report and adverse order of Disciplinary Authority entail denial of opportunity to represent before finding of guilt was arrived at—employee was prejudiced—order of

removal set aside—bank directed to grant opportunity to employee to explain his position after furnishing him with a copy of enquiry report and order of Disciplinary Authority."

Another law referred is 1995—I.L.N. 840 in which Hon'ble Supreme Court laid down—Authority higher than disciplinary authority imposing punishment gets lost.

Another law referred on behalf of the concerned workman is U. P. Industrial Disputes Act, 1947—Scooter India Ltd., Lucknow Vs. Labour Court, Lucknow in which Hon'ble High Court laid down—

"It cannot therefore be said that the Labour Court had exercised its powers under Section 6(2A) of the Act in an arbitrary manner and not in a judicial manner. The Labour Court has taken the view that justice must be tempered with mercy and that the earning workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of the petitioner, Company. It cannot therefore be said that merely because the Labour Court had found the enquiry to be fair and lawful and the findings not to be vitiated in any manner, it ought not to have interfered with the order of termination of service passed against the respondent in exercise of its powers under Section 6(2-A) of the Act."

Considering the above facts and circumstances it shows that when Charge No. 1 and Charge No. 2 regarding change of his name and the school is not in existence have not been proved and only charge that he has not given the name of his brother who was working in the Bank does not seem to be charged because no law has been referred or filed by the Bank management showing that it is misconduct. Moreover, regarding identity he has filed Voter List and also licence and also letter by Dist. Education Board confirming existence of school dated 10-11-05 from where the certificate was obtained and letter dated 24-12-04 which has been written by Supdt. of Police, Godda to the management regarding verification of character of the concerned workman which is in favour of the concerned workman, on which basis the Enquiry Officer found the charges against the concerned workman have not been proved, which he has given in the enquiry report.

8. Considering the above facts and circumstances, I hold that the action of the management of Zonal Manager, Giridih Zone, Bank of India, in discharging Sri Raj Kumar Jha, Staff-Subordinate from the service of the Bank is not legal, justified and proportionate to the fault/omission. So, the concerned workman is directed to be re-instated in service with 75% back wages and other consequential benefits. The management is directed to implement the award within 30 days from the date of publication of the award in the Gazette of India.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.आ. 2626.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय नं.-1, नई दिल्ली के पंचाट (संदर्भ संख्या 235/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/16/2011-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

—New Delhi, the 20th July, 2012

S. O. 2626.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 235/2011) of the Central Government Industrial Tribunal/Labour Court -1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 20-07-2012.

[No. L-12012/16/2011-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

ID No. 235/2011

Shri Kulanand Sharma,
WZ-870, Nagal Raya,
New Delhi.

... Workman

Versus

The Branch Manager,
Central Bank of India,
Lajpat Nagar,
New Delhi-110024.

... Management

AWARD

Shri Kulanand Sharma was engaged as personal driver by Branch Manager, Lajpat Nagar branch, Central Bank of India (in short the bank). Services of the claimant were dispensed with by the bank on 17-3-2008. It lead the employee to raise an industrial dispute before the Conciliation Officer. Since conciliation proceedings ended

into a failure, the appropriate Government referred the dispute to this Tribunal for adjudication, vide letter No. L-12012/16/2011-IR(B-II) New Delhi dated 13-06-2011, with following terms:

"Whether the action of the management of Central Bank of India in terminating the services of Shri Kulanand Sharma, Driver w.e.f. 17-03-2008 is legal and justified? What relief the workman is entitled to?"

2. Claim statement was filed on behalf of the claimant pleading therein that he was appointed as driver by the bank on 09-02-1990. He worked to entire satisfaction of the bank, without giving any chance of complaint to his superiors. Neither appointment letter nor attendance card nor leave card etc. were issued to him. No register of any type was maintained in respect of payment of bonus or overtime allowance etc. to him. He raised a demand for these facilities, which demand annoyed the bank. His services were terminated on 17-03-2008, without serving any charge sheet or holding an enquiry against him. Action of the bank, in terminating his services, is violative of the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Appointment of Shri Dalip Kumar Dahiya in his place is violative of the provisions of Section 25G of the Act. He had also made a request to the bank for regularization of his services, which was never conceded to. He projects that he is unemployed since the date of termination of his services. He claims reinstatement in services of the bank with continuity and full back wages.

3. Bank made a demurral, projecting that the claimant was working as personal driver of Branch Manager, Lajpat Nagar branch of the bank. He was never appointed by the bank. He was in no way connected with the functioning of the bank. As per rules, the executives in Scale IV are entitled to get reimbursement of expenses incurred by them on their personal drivers, to a prescribed limit. The claimant was not an employee of the bank and relationship of employer and employee between the parties were never created.

4. The bank, being a nationalized bank, appoints employees as per recruitment rules, after issuing advertisement of posts to public at large, which process is to be followed by test and interview. The claimant never submitted any application form for his appointment to any category. No appointment letter was issued in his favour by the bank. He, being personal driver of an executive of the bank, cannot make any claim against the bank. The bank formulated policy to absorb personal drivers working with its officers, subject to fulfillment of certain conditions. The claimant did not seek his absorption in the service of the bank. Even otherwise, he was not eligible to be absorbed in the services of the bank, as per guidelines laid down in that regard. For his absorption in the services

of the bank, the claimant ought to have rendered at least 6 years service, besides being within the age group of 18 years to 28 years plus actual services rendered by him, subject to maximum of 10 years. He should have passed 6th standard examination but ought not to, have obtained senior secondary school examination certificate on cut off date of eligibility. Claim put forward by Shri Kulanand Sharma is not maintainable, projects the bank.

5. The claimant has examined himself in support of his claim. Shri D.N. Sharma, entered the witness box to testify facts on behalf of the bank no other witness was brought forward by either of the parties.

6. Arguments were heard at the bar. Shri Aditya Aggarwal, authorised representative, advanced arguments on behalf of the claimant. Shri A.R. Verma, authorised representative, made his submission on behalf of the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows :

8. In his affidavit Ex WW1/A, tendered as evidence, the claimant swears that he was appointed in the bank on 09-02-1990 as driver. He worked with the bank honestly and diligently. His service period remained unblemished and satisfactory. His services were replaced by Shri Dalip Kumar Dahiya. His services were dispensed with on 17-3-2008 in an illegal manner. Three drivers, who were appointed in year 1990, were regularized in the services of the bank, while his case was not at all considered for regularization. Termination of his services is in violation of the provisions of Section 25 F of the Act. His juniors were retained in service and provisions of Section 25 G were violated by the bank. During the course of his cross-examination, he concedes that he was personal driver of the manager, who used to pay wages to him.

9. Shri D.N. Sharma swears in his affidavit Ex. MW1/A, tendered as evidence, that the claimant was never appointed by the bank at any point of time. He was working as personal driver of the branch manager, who used to pay his wages. the claimant never tendered any application to the bank for his appointment to any post. Since he was not in the employment of the bank, there was no question of payment of wages, bonus or overtime allowance. During the course of his cross-examination, Shri Sharma conceded that a personal driver maintain a log book, when he drives vehicles of the bank, in the capacity of a personal driver.

10. When facts unfolded by the claimant and Shri D. N. Sharma were closely perused, it came to light that the claimant admits that he was personal driver of the branch manager, who used to pay his wages in cash. He further admits that no employee number was issued to him by the bank. It is not disputed fact that the claimant was never called by the bank for employment. No appointment

letter was issued by the bank to the claimant. Identity card was not issued to the claimant by the bank. Claimant concedes that wages of the employees of the bank are transmitted to their SB accounts while his wages were paid in cash by the branch manager. In his cross-examination, he makes a candid admission that he was working as personal driver with the branch manager, who used to pay his wages from his personal account. Therefore, it is evident that the claimant has no better case than being employed as personal driver by the branch manager, posted at Lajpat Nagar branch of the bank from time to time.

11. The claimant was engaged as personal driver by the branch manager. Expenses incurred on the wages of the claimant were being reimbursed by the bank to the branch manager up to the prescribed limit. The mere fact that the claimant used to drive vehicle of the bank for the branch manager would not establish any relationship of employer and employee between the claimant and the bank. With such proposition, the Apex Court was confronted in Gulam Dastgir (AIR 1978 SC 481). In that case the Area Manager of a nationalized bank was being given personal allowance by the bank to enable him to employ personal driver of his own. The jeep which was being driven by the driver belonged to the bank. Its petrol and oil requirements and maintenance were within the financial responsibility of the bank. There was no evidence to the effect that the driver was employed by the bank or under its directions and control. There was also no evidence that the salary of the driver was paid by the bank. Considering all these aspects, Apex court ruled that there was no case of camouflage and sham contract. When the driver was engaged by the Area Manager, there existed no control and supervision over the driver by the bank, which fact negatived existence of relationship of employer and employee between the parties. Nothing unusual was noticed by the Apex Court when the bank gave allowance to its officer for engaging services of a personal driver. The said precedent is squarely applicable to the present controversy.

12. Claimant may seek reliance on a precedent in Ghanshyam [JT 2001 Suppl. (I) SC 229] wherein the Apex Court was concerned with the powers contained in Section 17-B of the Act. It was ruled therein that Section 17-B of the Act does not preclude the High Courts or the Apex Court under articles 226 and 136 of the Constitution from passing appropriate interlocutory orders, having regard to the facts and circumstances of the case. The court may, depending on the facts of a case, direct payment of full wages under Section 17-B of the Act only by the employer of the workman. The question whether the workman is entitled to the full wages last drawn or full salary, which he would be entitled to in the event of reinstatement while the award is under challenge in the High Court or Apex Court, depends upon the terms of the orders passed by

the court, which has to be determined on the interpretation of the order granting relief.

13. In that matter Ghanshyam was engaged as personal driver by the Regional Manager of the Dena Bank at Lucknow. At the end of tenure of the Regional Manager, services of Ghanshyam were terminated w.e.f. August, 90. He raised an industrial dispute and the industrial adjudicator passed an award holding that Ghanshyam was driver of the bank, termination of his services was uncalled for, hence he was ordered to be reinstated with back wages. The correctness of the award was assailed before the High Court of Judicature at Allahabad. Vide order dated 4-5-2000 High Court directed that Ghanshyam be paid wages in regular pay scale w.e.f. December, 6, 1996, within one month from the date of production of the certified copy of that order, failing which the appellant was directed to appear before the court on 4-7-2001. The said order was under challenge before the Apex Court. The Apex Court ruled that by the interim order High Court did not grant relief in terms of Section 17-B, may there is reference to that section in the order. Therefore, question of payment of "full wages last drawn" to Ghanshyam does not arise. Consequently it is evident that the precedent relied in Ghanshyam would not espouse the case of the claimant.

14. Ghomarbhai Harjibhai Rabari (2005 (2) LLJ 475) presents a situation when a personal driver engaged by the Executive of Bank of Baroda was held to be an employee of the bank. In that case, the driver produced three vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the bank. The bank could not rebut those vouchers. Signatures of the driver were also there on the register maintained by the bank. These facts led the Apex Court to conclude that relationship of employer and employee existed between the driver and the bank.

15. Here in the present controversy, the claimant could not show that his wages were paid by the bank or his name appeared in attendance register or payment scroll maintained by the bank. On the other hand, the claimant admits that he was personal driver of the branch manager. Consequently, the precedent in Gulam Dastgir (*supra*) rules the field as far as facts of the present controversy are concerned. Relying the said precedent and on consideration of the facts of the present controversy, it is concluded that the claimant was working as a personal driver of the branch manager. There existed no relationship of employer and employee between the claimant and the bank.

16. Since there existed no relationship of employer and employee between the claimant and the bank, termination of services of the claimant by the branch manager, nowhere violates provisions of the Act. It cannot

be said that the claimant was an industrial employee and a workman within the meaning of clause (s) of Section 2 of the Act. It cannot be said that dispensation of his services amounted to retrenchment within the meaning of clause (oo) of Section 2 of the Act. Under these circumstances provisions of Section 25-F, 25-G and 25-H of the Act nowhere come for rescue of the claimant. He is not entitled to any relief from the bank.

17. There is other facets of the coin. As projected, the bank introduced a policy for absorption of personal drivers as 'Driver-cum-Attender'. The policy was circulated on 01-04-2008. Two other circulars were also issued, one on 10-07-2009 and the other on 27-09-2010. As creeps out of circular dated 1-4-2008, for absorption in service of the bank a personal driver must have driven bank's vehicle for more than six years. He should be in age bracket of 18-28 years plus actual service rendered as personal drivers subject to maximum of 10 years service. In cases of SC/ST and OBC candidates, relaxation of 5 years and 3 years in age respectively, was also admissible. Personal drivers should have passed 6th standard but ought not to have obtained Senior Secondary School Certificate, as on eligibility date. Contents of the circular dated 10-7-2009 and 27-9-2010 are facsimile to those detailed in circular dated 1-4-2008. Consequently, it has been brought over record that personal drivers, serving executive of the bank, who had rendered more than six years service and falls within the age bracket and qualification on cut off date notified in the circular referred above, were eligible for absorption in services of the bank as 'Driver-cum-Attender'

18. The claimant projects that he was not considered for absorption in services of the bank. Though he made a faint attempt to assert that juniors to him in the capacity of personal drivers, were regularized in services of the bank as "Driver-cum-Attender", but his case was not considered. However he failed to establish that he submitted an application for his absorption which was not considered. It was for him to establish that he fulfilled the eligibility criteria for being considered for absorption as "Driver-cum-Attender" with the bank. He ought to have brought on the record that his application was not considered and junior to him was absorbed as "Driver-cum-Attender" in the services of the bank. It was for the claimant to prove that he stood on equal footing with the person, who was absorbed by the bank as Driver-cum-Attender, to claim equal treatment.

19. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Article 16 of the Constitution

guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments, (b) promotions, (c) termination of employment, (d) and matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

20. Fundamental rights guaranteed by article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making it the government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

21. Concept of equality guaranteed by Article 16 of the Constitution is something more than formal equality and enables the underprivileged groups to have a fair share by having more than equal chance and enables the state to give favoured treatment to those groups by achieving real equality with reference to social needs. 'Protection discrimination' enabled the state to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based in terms of nature of persons, nature of business and with reference to time. Therefore classification based on experience, in relation to time for which personal drivers employed by the officers of the bank had served, has a reasonable differentia.

22. To claim equality with the persons absorbed in the service of the bank, it was for the claimant to show that he stood on equal footing with them. The claimant has miserably failed to bring it over record that he was at

par with the personal drivers, who were absorbed in services of the bank. He could not show that he had rendered required service as personal driver and satisfy eligibility criteria relating to age and qualification, as notified in circulars, referred above. There is a complete vacuum of evidence that the claimant had rendered required service as personal driver and was eligible for consideration for absorption as 'Driver-cum-Attender' with the bank. In such a situation, the claimant does not stand at par with the personal drivers, whose services were absorbed by the bank. When claimant did not fall in the same bracket as the personal drivers, whose services were absorbed, were placed, it cannot be said that the claimant was discriminated. When he was not discriminated, absorption of the claimant in service of the bank cannot be ordered since it would amount to back door entry in the Government job. Law to this effect was laid by the Apex Court in Uma Devi (2006 (4) SCC 1). In view of these facts it is abundantly clear that the claimant is not entitled for relief of absorption in the services of the bank on the ground of parity with the personal drivers, who were absorbed in the service of the bank.

23. As detailed above, the claimant has no case, either for reinstatement or absorption in service of the bank. He is not entitled to any relief. His claim is liable to be dismissed. Consequently, his claim is dismissed and an award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 28-05-2012

नई दिल्ली, 20 जुलाई, 2012

आ.आ. 2627.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/त्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/88/2003 को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था ।

[सं. एल-12012/39/94-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

—New Delhi, the 20th July, 2012

S. O. 2627.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/88/2003) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to

the management of UCO Bank and their workman, which was received by the Central Government on 20-07-2012.

[No. L-12012/39/94-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/88/2003

Date : 12-07-2012.

Party No. 1 : The Divisional Manager,
UCO Bank, Divisional Officer,
108-Sushil Bhawan, Balraj Marg,
Dhantoli, Nagpur-440012.

Versus

Party No. 2 : Shri Rajgopal Armugam,
New Majri Colliery, Mines Quarters
(Sweeper Colony), Tah. Bhadrawati,
Distt. Chandrapur (M.S.)

AWARD

(Dated : 12th July, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of UCO Bank and their workman, Shri Rajgopal Armugam, to CGIT-Cum-Labour Court, Jabalpur for adjudication, as per letter No. L-12012/39/94-IR (B-II) dated 28-4-1994, with the following schedule :—

"Whether the action of the management of UCO Bank, New Majri Branch in terminating the services of Shri Rajgopal Armugam, temporary sub-staff w.c.f. 28-12-1991 is justified ? If not, what relief is the workman entitled to ?"

Subsequently, the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Rajgopal Armugam, ("the workman" in short), filed the statement of claim and the management of UCO Bank, ("Party No. I" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that the party no. I is a nationalized Bank and the service conditions of the employees of party No. I are governed by the provisions of the Bipartite Settlement and the circulars issued by the Head Office of the Bank in respect of the service conditions not covered under the Bipartite Settlement and vide circular dated 31-3-1990, Head Office of the Bank made it clear that the persons engaged on daily wages basis in the branches

would be absorbed in permanent employment of the Bank, depending upon the workload of the branch and he was appointed on 27-04-1991, @ Rs. 15 per day and worked till 28-12-1991 at New Majri Branch of the Bank, on which date, his services were terminated by the Manager of the Bank illegally and he was not paid wages for Sundays and Holidays and he was put to hard labour beyond the working hours of the Bank and in his place, another daily wager came to be appointed and due to his illegal termination from services, he approached the Assistant Labour Commissioner (C) Chandrapur ("the ALC" in short) and before the ALC, the party no. I admitted the facts that he was appointed by them on daily wages basis at the rate of Rs. 15 per day and he worked at New Majri Branch from 27-04-1991 to 31-12-91. The further case of the workman is that there was a settlement between the union and the management in 1989 and as per the said settlement, he should have been given permanent employment, as the vacancy is still in existence. The workman has prayed to set aside the impugned order of termination and to reinstate him in service with continuity and full back wages.

3. The party no. I in their written statement has pleaded inter-alia that the workman was never appointed as an employee by them and as such, there was no question of issuing any order of termination and there was no relation of employer and employee between them and the workman and the workman was doing the work of cleaning, Sweeping and dusting etc. in the branch, for about 2 to 3 hours of the day and he was being paid for the work done and the settlement between the union and the management was for absorption of certain classes of persons and the workman did not fall within the scope and ambit of the said settlement and no illegality was done by them and the workman is not entitled to any relief.

4. In support of their respective claims, both the parties have led oral evidence and have also relied on documentary evidence as well. The workman has examined himself as a witness and reiterated the facts mentioned in the statement of claim. One Deepak Gangaram Hadekar has been examined, as a witness on behalf of the management. It is necessary to mention here that as neither the workman nor anybody else appeared on behalf of the workman on 25-01-2012, to cross-examine the witness for the management, "no cross" order was passed. The evidence of the witness for the management remained unchallenged. It is also necessary to mention here that on 25-01-2012, order was passed to proceed with the case ex parte against the workman, as the workman did not appear to take part in the case.

5. According to the workman, he worked with the party no. I from 27-4-1991 to 28-12-1991 as a full time worker on daily wages and 28-12-1992, his services were terminated.

However, at some places, the workman has claimed the date of his termination as 31-12-1992, which shows that the workman himself is not clear about the date of his termination. It is necessary to mention here that the workman has claimed that he is entitled for regular employment with party no. 1 on the basis of the circular no. CHO/PAS/4/90 dated 31-03-1990 and the settlement between the union and the management in 1989. The workman has not claimed that his termination is illegal as he had completed 240 days of work in the proceeding 12 calendar months and due to non-compliance of the provisions of section 25-F of the Act. As the workman according to his own claim, did not complete one year of service, so provisions of Section 25-F are not applicable to his case. Moreover, it is found from the copy of the letter written by the workman to the ALC for raising the industrial dispute that the workman had mentioned in the same that he was on the verge of completion of 240 days of work. From the said fact, it can be held that the workman did not complete 240 days of work.

6. Management has claimed that the workman was working for 2 to 3 hours per day for doing the work of cleaning and dusting. However, from the copy of the reply submitted by the Branch Manager of New Majri Branch before the ALC, it is found that party no. 1 had admitted that the workman was working from 10 AM to 5 PM on daily wages from 27-4-1991, but his services were not regular and on or about 30-12-1991, he was not in the employment of the Bank. So, the plea of party no. 1 that the workman was engaged as a part time worker on daily wages cannot be accepted.

7. On perusal of the circular no. CHO/PAS/4/90, it is found that the same was a circular dated March 31, 1990 for empanelment and absorption of persons engaged on daily wages basis in terms of the settlement dated 12-10-1989 and the same was issued for employment and regularisation of daily wagers working in the branches of the Bank prior to the issuance of the circular and not to daily wagers appointed after the date of issuance of the circular. Admittedly, the engagement of the workman was on 27-4-1991, which was much later than the date of the issuance of the circular. So, the aforesaid circular and so also the settlement of 1989 have no application to the case of the workman and the workman is not entitled for permanent employment on the basis of the afore stated circular or settlement. Hence, it is ordered :—

ORDER

The action of the management of UCO Bank, Majri Branch in terminating the services of Shri Rajgopal Armugam, temporary sub-staff w.e.f. 28-12-1991 is justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.अ. 2628.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/72/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/49/2006-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 20th July, 2012

S. O. 2628.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/72/2006) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workman, which was received by the Central Government on 20-07-2012.

[No. L-12012/49/2006-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/72/2006 Date : 27-06-2012.

Party No. 1 : The Regional Manager,
Bank of Maharashtra,
Regional Office, Near Sidharth Hotel,
Chandrapur (MS) - 442402.

Versus

Party No. 2 : Shri Anil Vithu Asekar,
R/o. Village Wanjri, Tah. Wani,
Yavatmal (MS)

AWARD

(Dated : 27th June, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of and their workman, Shri Anil Vithu Asekar, for adjudication, as per letter No. L-12012/49/2006-IR (B-II) dated 28-08-2006, with the following schedule :—

"Whether the action of the management in relation to Bank of Maharashtra of Wani Branch in terminating the services of Shri Anil Vithu Asekar, R/o Wanji,

Tah. Wani, Distt. Yavatmal is legal & justified? If not, to what is the relief to which the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly the workman, Shri Anil Vithu Asekar, ('the workman' in short), filed the statement of claim and the management of Bank of Maharashtra, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he is a workman within the meaning of Sec. 2 (S) of the Act and the party no. 1 is an industry, within the meaning of Section 2(j) of the Act and he worked as a "Safai Kamgar" w.e.f. 1-9-2004 at Wani Branch of the Bank and his working hours were from 8 AM to 7 PM, with half an hour rest from 4 PM to 4.30 PM and he was working more than 8 hours daily and more than 48 hours in a week, without payment of overtime wages and the party no. 1 all of a sudden, terminated his services orally, without giving one month's notice or notice pay in lieu of notice or retrenchment compensation as per the mandatory provisions of Section 25- F of the Act and as such, the termination of his services is void, illegal and against the principles of justice and on 19-10-2005, he served a demand notice on party no.1 by registered post, but no action was taken on the same and at the time of termination of his services, his monthly salary was Rs. 4600 and there was no break in his service and he had completed 240 days of continuous service in 12 calendar months and his post was a regular and permanent post and there was no reason for the party no. 1 to retrench him and the party no.1 with ulterior motive, deliberately and willfully terminated his services, under colourable exercise of power and such retrenchment was arbitrary and by way of victimization and no seniority list was displayed by party no. 1 at the time of termination of his services and as the termination was illegal he is entitled to be reinstated in service with continuity and full back wages.

3. The party no. 1 by filing its written statement has resisted the claim of the workman. In the written statement, party no. 1 has denied the pleadings made in the statement of claim and has pleaded inter-alia that the workman was engaged purely on temporary basis, as and when required for filling up the temporary vacancy of part time sub-staff and he was never appointed as a permanent sub-staff w.e.f. 1-9-2004 and the working hours of the workman were never from 8 AM to 7 PM and the workman did not work continuously for more than 240 days and as such, there was no necessity of issuance of any notice before termination of the workman from the services and the workman was never appointed by it on permanent basis and as such, question of his retrenchment/termination does not arise and in view of the judgment of the Hon'ble Apex Court in the case of Secretary, State of

Karnataka and others Vs. Umadevi and some others, the workman is not entitled to any relief.

4. The workman has examined himself as a witness in support of his claim, besides placing reliance on documentary evidence. The examination-in-chief of the workman is on affidavit. The workman in his examination-in-chief has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the workman has admitted that he has not filed any document to show that his name was sponsored by the Employment Exchange, on the basis of the requisition of the Bank and he had received the letter dated 18-06-2004, document Ext. W-II issued by the Bank and the contents of Ext. W-II are true and in Ext. W-II, it has been mentioned that he would be appointed purely on temporary daily wages basis and his appointment would be for the period as required by the Bank and accepting the conditions mentioned in Ext. W-II, he joined duty with the Bank. The workman has further admitted that he had received the letters dated 16-08-2005, 22-08-2005, 01-09-2005 and 01-09-2004 issued by the Bank (documents Exts. W-III, W-IV, W-V and W-VI respectively) and as per documents Exts. W-III, W-IV, W-V and W-VI, he was appointed by the Bank for the period from 16-08-2005 to 19-08-2005, 22-08-2005 to 31-08-2005, 01-09-2005 to 30-09-2005 and 01-09-2004 to 04-09-2004 respectively and his appointment from 22-08-2005 to 31-08-2005, 01-09-2005 to 30-09-2005 and 01-09-2004 to 04-09-2004 was due to the absence of Bijay Pardhi, and Kailash Mogre respectively and except the above stated five letters filed by him, no other letter was issued by the Bank to him.

5. One Milind Digamber Wasmatkar, a Branch Manager, has been examined as a witness by the party no.1. In his examination in chief, which is on affidavit, this witness has reiterated the facts as mentioned in the written statement. In his cross-examination, this witness has stated that he did not visit Wani Branch of the Bank during the period from 01-09-2004 to 01-10-2005 and when the workman was working in Wani Branch, one Vijay R. Pardhi was the part time sweeper and the workman had not been paid any amount towards notice pay.

6. Before delving into the merit of the case, I think it necessary to mention here that in the schedule of reference, the date of alleged termination of the workman from service has not been mentioned. The workman also neither in his statement of claim nor in his evidence on affidavit has mentioned the alleged date of termination. However the party no. 1 in its written statement has mentioned the alleged date of termination of the workman as 01-10-2005. The workman has not disputed such claim of the party no.1. Hence, the alleged date of termination of the workman is held to be 01-10-2005.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed by the party no.1 on 01-09-2004 against

permanent vacancy and he worked continuously till 01-10-2005 without any break and the workman had completed more than 240 days of work in the preceding 12 calendar months of the date of his termination and such facts have been conclusively proved by the evidence of the workman and the documents produced by him including the copy of the attendance register and before termination of the services of the workman, the mandatory provisions of Section 25-F of the Act were not complied with and as such, the termination is illegal and therefore, the workman is entitled to reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the party no. 1 that the workman was engaged purely on temporary basis, as a part time sub-staff, as and when his services were needed by party no. 1 and he was never appointed as a permanent part time sub-staff and he was not terminated on 01-10-2005 and infact, he was engaged for specific periods and after completion of work assigned to him or on expiry of the specific work, his services were automatically coming to an end and the workman had not worked continuously for 240 days with party no. 1 and as such he is not entitled for retrenchment compensation or any other relief.

9. Perused the record including the evidence adduced by the parties. From the materials available on record it is found that the workman was engaged by the party no. 1 purely on temporary basis and the engagement of the workman was not against any permanent post and was not a regular appointment in accordance with the recruitment rules of party no. 1.

10. The workman has claimed that he had worked continuously and had completed 240 days of work prior to the date of termination of his services, whereas, party no. 1 has denied such claim and has pleaded that the workman was engaged as and when required by the Bank and the workman had never worked for 240 days continuously with it. In view of such stands taken by the parties, I think it necessary to mention the principles as enunciated by the Hon'ble Apex Court in this regard.

11. The Hon'ble Apex Court in the decision reported in AIR 1966 SC-75 (*Employees, Digawadih Colliery Vs. Their workmen*) have held that :

"Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(ee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the

amendment of Section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended Section 25 B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary, if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

12. In the decision reported in AIR 1981 SC-1253 (*Mehanlal Vs. M/s. Bharat Electronics Ltd.*), the Hon'ble Apex Court have held that :

"Industrial Disputes Act, 1947 (14 of 1947). Section 25-B (1) and (2) Continuous service Scope of sub-sections (1) and (2) is different, (words and phrases—Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

13. The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (*M/s. Essen Deinay Vs. Rajeev Kumar*) have held that :

"Industrial Disputes Act, 1947 (14 of 1947)-S.25-F, 10—Retrenchment compensation-Termination of services without payment of—Dispute referred to 'Tribunal-Case of workman/claimant that he had worked for 240 days in a year preceding his termination—Claim denied by management Onus lies upon claimant to show that he had in fact worked for 240 days in a year. In absence of proof of receipt of salary, the affidavit of the workman is not sufficient evidence to prove- that he had worked for 240 days in a year preceding his termination."

14. The Hon'ble Apex Court in the decision reported in (2005) 5 SCC-100 (*Reserve Bank of India Vs. S. Mani*) have held that :—

"Industrial Disputes Act, 1947 -Ss.25-F, 25-N, 25-B and II—240 days' continuous Service Onus and burden

of proof with respect to—Evidence sufficient to discharge—Failure of Employer to prove a defence (of abandonment of service) if sufficient or amounted to an admission, discharging the said burden of proof on the workman discharged, merely because employer fails to prove a defence or an alternative plea of abandonment of service—Filing of affidavit of workman to the effect that he had worked for 240 days continuously or that the workman had repeated representations or raised demands for reinstatement, is not sufficient evidence that can discharge the said burden—Other substantive evidence needs to be adduced to prove 240 days' continuous service—Instances of such evidence given.

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service.

Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court of Tribunal to come to the conclusion that a workman had in fact, worked for 240 days in a year. Such evidence might include proof of receipt of salary or wages for -240 days or order or record of appointment or engagement for this period or the terms and conditions of his offer of appointment, or by examination of any other witness in support of his case.

15. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of Section 25-F of the Act, it is necessary for the workman to prove that he worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

16. Now, with the touch stone of the principles enunciated by Hon'ble Apex Courts as mentioned above, the present case in hand is to be considered. The workman to prove his case has placed reliance on the documents, Exts. W-I to W-VI and the zerox copy of the attendance register, beside his own oral evidence. Ext. W-I is a pass book of the Bank of Maharashtra of Wani Branch. Nothing has been mentioned by the workman regarding Ext. W-I in his statement of claim. However, in his evidence, for the first time the workman has stated that his salary was being deposited in the pass book maintained in the Branch of the Bank. He has also proved the pass book as Ext. W - I. According to the statement of claim filed by the workman and his own evidence; at the time of termination, his monthly salary was Rs. 4600. However, on perusal of the entries in W-I, it is found that there is not a single entry in the same showing deposit of Rs. 4600 to support the claim of the workman. Moreover, during the cross-examination of the witness for the party no. 1 it was asked

that the wages to the workman was paid during the period from 1-9-2004 to 1-10-2005 on vouchers and the witness admitted the same. Such fact demolishes the claim of the workman that his salary was being deposited in the pass book. Moreover, from Ext. W-I, it is no way possible to know as to for how many days the workman had worked.

The documents, Exts. W-II to W-VI, instead of supporting the claim of the workman, support the claim of the party no. 1. The said documents show that the engagement of the workman was purely on temporary basis for intermittent period in the temporary absence of the permanent sub staff of party no. 1. Exts. W-II to W-VI do not show that the workman in fact had worked at least for 240 days in the preceding 12 months of 1-10-2005.

The workman has relied on the Xerox copies of the so called attendance register in support of his claim of working with party no. 1 continuously from 1-9-2004 to 1-10-2005. However, the said document seems to be a dubious and unreliable document for the following reasons :-

- (i) The workman has not mentioned anything about his signing the attendance register alongwith other employees of the Bank in the statement of claim.
- (ii) The workman has not mentioned anything about the attendance register in his evidence on affidavit.
- (iii) The attendance register has not proved by the workman.
- (iv) According to the the said attendance register, the workman worked from 01-09-2004 to 30-09-2004, but Ext. W-VI shows that the workman was engaged by party no. 1 from 01-09-2004 to 04-09-2004.
- (v) Likewise, according to the attendance register, the workman worked for the entire month of August, 2005, whereas Exts. III and IV show that the engagement of the workman was from 16-08-2005 to 19-08-2005 and from 22-08-2005 to 31-08-2005 and not for the entire month. Hence, it is not at all possible to place reliance on the attendance register.

17. From the materials on record and the discussions made above, it is clear that the workman has failed to prove that infact he had worked for 240 days in the preceding 12 calendar months of the date of his alleged termination i.e. 1-10-2005. Hence, the provisions of section 25-F read with section 25-B are not applicable to his case. Hence, it is ordered :—

ORDER

The action of the management in relation to Bank of Maharashtra of Wani Branch in terminating the services of Shri Anil Vithu Asekar, R/o. Wanjri, Tah. Wani, Distt. Yavatmal is legal & justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

Workman

का.आ. 2629.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 75/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/111/2008-आई आर (बी-1)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 20th July, 2012

S. O. 2629.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 75/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of State Bank of India, and their workman, received by the Central Government on 20-7-2012.

[No. L-12012/111/2008-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present :**

Shri J. Srivastava. Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar.

**Industrial Dispute Case No. 75/2008
Date of Passing Award-25th June, 2012**

Between:

The Assistant General Manager,
State Bank of India, Bapujinagar Branch,
Distt. Khurda, Orissa, Bhubaneswar (Orissa)

... 1st Party-Management

(And)

Their workman Sri Lingaraj Nahak,
Qt. No. VR-5/I, Kharvela Nagar, Unit-3
Bhubaneswar. (ORISSA)

... 2nd Party-Workman

APPEARANCES :

Shri Alok Das,
Authorized Representative

...For the 1st Party
Management.

None.

...For the 2nd Party

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 vide their Letter No. L-12012/111/2008-IR (B-I), dated 10-10-2008 to this Tribunal for adjudication to the following effect:

Whether the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Lingaraj Nahak w.e.f. 30-09-2004 without complying the provisions of the ID. Act. 1947, is legal and justified? To what relief is the workman concerned entitled?

2. The 2nd Party- Workman has filed his statement of claim alleging that he had Joined his services as a Messenger on 16-3-1988 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 5-11-2007. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No.

25 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank on 16-3-1988 and he was discontinued from service on 30-9-2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has never completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for an interview along with other eligible persons in the year 1993. As he was not found successful in the said interview he could not be in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997 filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15-5-1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC - 3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Nahak had allegedly been terminated on 30-12-1997 his claim has become stale by raising the dispute after lapse of period of 10 years. It is a settled principle of law that delay destroys the right to remedy. Thus raising the present dispute after 10 years of alleged termination is liable to be rejected.

4. On the pleadings of the parties following issues were framed :

ISSUES

1. Whether the action of the Management of State Bank of India, Bhubaneswar Main Branch in terminating services of Shri Lingaraj Nahak with effect from 30-9-2004 without complying the provisions of the ID. Act, 1947 is legal and justified?

2. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?

3. Whether the workman has worked for more than 240 days as enumerated in the Industrial Disputes Act?

4. To what relief is the workman concerned entitled?

5. The 2nd Party-workman despite giving sufficient opportunity did not produce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Abhay Kumar Das as M.W.-I and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO.1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in ID. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in ID. Case No. 7/2007 is given below for comparison with the dispute in the present case -

Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(II) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd party-workman appears at S1. No. 25 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-II of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present

reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service on 16-3-1988 and worked till 30-9-2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. MW.-I Shri Abhay Kumar Das in his statement before the Court has stated that "the disputant was working intermittently for few days in our branch on daily wage basis in exigencies. He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued with effect from 30-9-2004, but stated that "Infact the workman left working in the Branch since December, 1997". The 2nd Party-workman has to disprove the evidence led by the 1st Party- Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage

employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Lingaraj Nahak with effect from the alleged date of his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above under Issues No.2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

Dictated & Corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.आ. 2630.—औद्योगिक विवाद अधिनियम, 1947 (1947

का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण /श्रम न्यायालय, सोलापुर के पंचाट [संदर्भ संख्या(आईटी) 01/2001] को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12011/8/2001 आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 20th July, 2012

S. O.2630.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. (11), 01/2001] of the Industrial Tribunal Labour Court, Solapur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bank of India, and their workman, which was received by the Central Government on 20-7-2012.

[No. L-12011/8/2001-IR(B-II)]

SHEESH RAM, Section Officer

**ANNEXURE
BEFORE THE HON'BLE MEMBER, INDUSTRIAL
TRIBUNAL, SOLAPUR
Reference (IT) No. 1/2001**

Between

The Management,
Bank of India,
SolapurFirst Party

And

Vinayak Bhagwat More
The General Secretary,
Bank of India Employees Union
440/57, Bank of India

..... Second Party

**IN THE MATTER OF REFERENCE UNDER SECTION 10
OF THE INDUSTRIAL DISPUTES ACT, 1947, 'FOR
ADJUDICATION'**

CORAM:— S.J. Kale, Member,
Industrial Court Solapur.

Appearances :— Shri K. Chandramohan Adv. for the First
Party
Shri R. G. Mhetras Adv. for the Second
Party.

AWARD-(PART-2)**(Delivered on : 21-4-2012)**

1. In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, the Central Government has made the present reference to this tribunal for adjudication of the dispute. The Central Government i.e. the Appropriate Government is of the opinion that an industrial dispute exists between the employers in relation to the management of Bank of India and their Workman, in respect of the matter specified in the Schedule, which is as under:—

SCHEDULE

“ Whether the action of the management of Bank of India, Regional Office, Solapur in terminating the services of Shri V.B. More, Clerk-Cashier of Laxmi Dahiwadi Branch w.e.f. 31-10-98 on the alleged charges vide chargesheet dated 10-10-96 is legal and justified ? if not, what relief the concerned employee is entitled to? ”.

2. On receipt of the order regarding the reference, the parties were summoned. The management is referred as first party and the workman is referred as a second party henceforth for the purpose of convenience.

3. They have appeared with their respective counsels. The second party has submitted his statement of claim (Exh. U-8). Similarly, the first party has filed its written statement (exh. C-4).

Genesis of the dispute as under :—

4. The second party having put in about 16 years of continuous and uninterrupted service with the first party as clerk-cum-cashier was suspended w.e.f. 1-8-1994 by the

first party. Subsequently, the second party was terminated from the employment w.e.f. 31-10-1998, on paying arrears of subsistence allowance to the tune of more than 1,64,000.

5. After suspending him, the first party served him with charge-sheet on 10-10-1996, on the allegation that, he has committed acts of misconduct in terms of clause 19-50(i) of First Bipartite Settlement of 19-10-1966. According to the second party, he has not committed any act of misconduct and a criminal case with respect of charges were framed had already resulted in his acquittal and as such, there was no question of holding any departmental enquiry on the allegation of moral turpitude. It is also his case that he was not paid subsistence allowance as per the provisions of the Bipartite Settlement. Thus, the first party has violated the provisions of the Bipartite.

6. It is also claimed that though he was kept under suspension w.e.f. 1-8-1994, the first date of hearing of departmental enquiry was on 19-7-1997, i.e. after about 3 years. Thus, the enquiry was deliberately initiated belatedly without paying subsistence allowance regularly, causing grave injustice to him.

7. It is also the case of the second party that the enquiry officer, Shri. V. P. Kamble instead of becoming witness in the enquiry, was appointed as an enquiry officer after voluntary retirement of Shri K. R. Shah. Shri Kamble acted in most bias manner. His request to grant time for making representation to the Chairman and Managing Director regarding changing the enquiry officer was turned down. His request to honour the judgment of the Criminal Court regarding his acquittal was also not considered, especially when, nobody preferred any appeal against the acquittal. Thus, the first party was victimizing him without any reason and their bias is conclusively established. It is alleged that throughout the enquiry, the approach of the enquiry officer was one sided, unjust and vindictive, resulting in violation of principles of natural justice. The enquiry officer was intimately connected with Gaikwad's family who raised grievance against the second party by lodging the report making false allegations of criminal intimidation and rape of his daughter. In fact, the enquiry officer was close of Shri Gaikwad family, when, he was residing and serving at Mohol. In such situation, Shri Kamble should not have acted as enquiry officer in the proceeding against the second party.

8. The first party deliberately waited for the decision of Sessions Court against the second party in the hope that he will be convicted and the departmental enquiry would be held ex parte as he would be in jail. But, having been acquitted as there was no evidence against him, the first party decided to hold enquiry. The enquiry officer, during the enquiry violated the principles of natural justice. During cross-examination, the enquiry officer had put some

loaded questions and sometimes leading loaded questions, Presenting officer was allowed to file the documents against the second party at the fag end of the enquiry. When he raised objection on the ground that original documents have not been filed, his objection was deliberately turned down. The enquiry officer had deliberately allowed the presenting officer to lead additional evidence of witnesses, who were examined in the criminal trial and whose versions were discarded by the Sessions Court. The enquiry officer intentionally allowed the evidence of police officers Seema Gokhale and Shri Patil P.S.I. These persons were not shown as witnesses at the start of the enquiry. Considering all these and other grounds, the second party has come with the case that the departmental enquiry initiated against him by the first party was totally in violation of principles of natural justice and the action of first party on the basis of the enquiry report is totally illegally, illogical and liable to be set aside.

9. The first party opposed all the contentions in the written statement. It is claimed that the second party, who was compelled to face trial under Section 376, 506 read with 34 of the Indian Penal Code on the allegation that he ravished and harassed one Miss Vidhya for about one and half to two years. He was acquitted only because of want of evidence of star wireness i.e. the prosecutrix due to her unfortunate death. After his acquittal, it was decided to initiate departmental enquiry against the second party in pursuance of the provisions of Bipartite Settlement dated 19-10-1966. His acquittal in a criminal case doesn't debar the first party from holding the departmental action against him in view of para 19.3 (c) of the Bipartite Settlement. The charges levelled against the second party implied moral turpitude.

10. The delay in completion of enquiry was due to the conduct of the second party. The second party participated in the enquiry proceeding through his defence representative. The witnesses produced by the management were cross-examined at length. The enquiry officer, while conducting the enquiry followed the basic rules of natural justice and submitted its findings with reasons. Considering all these and other grounds, the first party has submitted that the enquiry having been conducted in fair, proper and legal manner and as such, the findings given by the enquiry officer are commensurate with the evidence before the enquiry officer. In alternative, it is also submitted by the party that in case the Court comes to the conclusion that the enquiry is not fair, proper and legal then, a chance may be accorded to the first party to prove the charges before the Court by leading cogent evidence.

11. This tribunal passed Award Part I on 14-06-2011 on the point of legality of enquiry. It is declared that the departmental enquiry conducted by first party against the

second party is illegal, invalid and violative of principles of natural justice and the findings given by the enquiry officer are perverse. The first party was given liberty to prove the charges by fresh evidence. Accordingly, the first party tendered oral evidence of 5 witnesses namely, Trimba Apparao Gaikwad (CW-1); Yuvraj Apparao Gaikwad (CW-2), Namdeo Sopan Narute (CW-3); Sou, Seema Mehendale (Seema Gokhale) (CW-4) and Anil Jadhav (CW-5).

In rebuttal, the second party lead his evidence by way of affidavit (UW-1). Both parties have placed reliance on various documents specially enquiry papers.

12. Both senior counsels have filed a written notes of arguments at exh.U-31 and C-35. Shri. Mhetras Advocate has also placed reliance on various authorities, which would be discussed at appropriate stage. I also heard both the counsels in addition to written notes of argument. After considering evidence on record, submissions of the counsels and the various authorities relied by the counsels, the following points arise for my determination to decide this reference.

POINTS	FINDINGS
1. Whether the action of the management of Bank of India Regional Office, Solapur (first party) in terminating the services of Shri V. B. More (i. e. second party) Clerk- Cashier of Laxmi Dahiwadi Branch w.c.f. 31-10-90 on the alleged charges made in chargesheet dated 10-10-96 is legal and justified?	No
2. To what relief second party is entitled to ?	Reinstatement with continuity of service and 50% back wages.

REASONS

13. The second party has attacked the procedural aspect of departmental enquiry held against him on various grounds as mentioned in his statement of claim and supported by his evidence affidavit (exh. UW-1). He has been subjected to searching cross-examination by the counsel for the first party. The various important grounds of attack are:—

(a) Non-payment of subsistence allowance regularly, violating the provisions of Bipartite Settlement.

(b) Dragging of departmental enquiry for years together.

(c) Bias attitude and interestedness of the enquiry officer during the enquiry.

(d) Ignoring the fact of acquittal of the second party in a criminal trial, which was based on same set of facts.

(e) Violation of procedure laid down Bipartite Settlement by the enquiry officer.

(f) Causing prejudice to the second party by allowing the first party to lead evidence of police witnesses, which were not cited earlier.

(g) Total discarding the defence/evidence rendered by the second party.

(h) Absence of logical inferences after considering evidence on record.

(i) Non observance of principles of natural justice during the enquiry.

ADMITTED FACTS:—

14. The second party was admittedly suspended on 1-8-1994. In criminal prosecution launched against him on the report of the father of the prosecutrix Smt. Vidhya under Sections 376, 506 read with 34 of I.P. Code ended in acquittal on 30-11-1995. Thereafter, he was served with charge-sheet on 10-10-1996 mainly on the allegation that he had ravished the deceased prosecutrix in 1994. There is also no dispute regarding the fact that initial enquiry was held by one Shri K.R. Shah and on his retirement, it was taken over by Shri V. P. Kamble during 1997. The enquiry against the second party was conducted during 1996- 1997. Enquiry Officer Shri Kamble submitted his report on 12-8-1997 to the Regional Manager and Disciplinary Authority of Bank of India, Solapur region.

POINT NO. 1:—

15. This tribunal in pursuance of the Award Part I has given an opportunity to the first party to prove the charges levelled against the second party in the chargesheet dated 10-10-96. Accordingly, 5 witnesses have been examined by the first party. Out of them, first 2 witnesses are the closed relatives of deceased prosecutrix Vidya. Namdeo Nature (CW-3) is the land lord of second party when he was residing at Mohol. Seema Mehendale (CW-4) is the investigating officer, who carried out investigation in criminal case launched against the second party on the report of CW-1 Trimbak Gaikwad. Shri Anil Jadhav (CW-5) is senior branch manager of the management of Bank of India. It would be appropriated to appreciate their evidence in detail in order to decide whether their evidence would prove the charges levelled against the second party in the chargesheet.

16. First of all, I would like to reproduce the contents of the chargesheet dated 10-10-96 in order to appreciate the factual aspect properly.

CHARGE SHEET

Acts of misconduct as hereinafter stated which imply mortal turpitude, alleged to have been committed by you while you were working as in the Bank.

That during your posting at Bank's Mohol Branch, you developed family terms with one bank's customer Shri T.A. Gaikwad, a resident of Mohol. You, against the moral ethics of the society developed illicit sexual relationship with Vidya, the daughter of Shri Gaikwad, who was taking training course in nursing at Mule Hospital, Solapur. Once you took her at your residence at Solapur and have sexual intercourse with her forcibly and also allegedly taken her nude photographs. Since then, you continued to have illicit relation with her against her wishes and consent through intimidation and other coercive methods thereby causing harrasment and injury in mind to a fellow being of the society for satisfying your lust. On 18-07-1994 and 19-7-94, you visited Mule Hospital, Solapur and threatened Vidya as to kill and abduct her, if she does not continue such relation. Later on 24-07-1994, Vidya lodged an F.I.R. against you stating that you had been having sexual intercourse with her forcibly against her wishes, blackmailing her on the strength of some nude photographs allegedly taken by you. During investigation the police authorities seized a camera and some other phonographic books in you possession. Thereafter, you were put on trial.

That compelled from the grave mental injury caused to her due to you and unable to beat the stigma of the society, resulted from your lust, Vidya committed suicide during the pendency of the trial against you.

That news of your aforesaid misdeed was also published in different newspapers having substantiate circulation in the ares, which had put the Bank in a very embattassing position and obviously have adversely affected its reputation.

2. Your aforesaid acts though committed by you outside the Bank's premises, are contrary to the moral ethics of the society had to commit suicide, are having direct bearing with the reputation of the Bank for the obvious reasons. Your said acts imply moral turpitude and amount to acts of gross misconduct in terms of Clause 19.15(j) of the First Bipartite Settlement dtd. 19-10-1966 which reads as under "Doing acts prejudicial to the interest of the Bank".

17. On going through the aforesaid charge sheet, first part of it is mainly concerned with intimate relations developed by second party with late Ms. Vidya Gaikwad, had led to unethical elicit sexual relation and thereafter alleged coercive methods adopted by him for causing harassment and injury to her for satisfying his lust. In order to prove such allegations, the most vital witness could have been Ms. Vidya, who lodged the report with the police

and police initiated criminal prosecution charging him with the various offences punishable under Sections 376 and 506 (2) read with 34 of Indian Penal Code. The said criminal prosecution bearing Session Case No. 53 of 1995 led to clear cut acquittal on 31-11-1995 by then 4th Assistant Sessions Judge, Solapur (Shri S. Y. Pathye). The Sessions Judge has considered all the pros and cons of the material witnesses, including close relations of Smt. Vidya. The Ld. Sessions Judge after appreciating the evidence has observed in para No. 18 to 20 of the judgment that, the prosecutrix was consenting party. Consequently, evidence of her close relative i. e. her father did not inspire confidence in his mind.

Now, the first party has again examined same witness as CW-1 before this Court, who almost reiterated the same set of facts as stated before the enquiry officer and the Sessions Court. He has been subjected to cross-examine by Ld. Adv. Mhetras for second party. From his evidence, it again becomes clear that when his daughter Ms. Vidya was pursuing nursing course at Muley Hospital, Solapur in 1991, the second party alleged to have developed intimate relation with her, which seems to be continued for quite long period, when she could no longer bear over powering and threatening attitude of the second party, than she narrated the whole episode to her father i.e. the witness.

Consequently, his brother Yuvaraj Gaikwad (CW-2) could not resist and alleged to have beaten the second party in a square at Mohol and then he was transferred to Laxmi Dahiwadi. Here it is to be seen that, the report was lodged by CW-1 in July, 1994 i.e. after more than two years. It is to be noted that the prosecutrix was educated, deserted and responsible lady. There was no reason for such lady to bear such so called on slough of the second party. Moreover, CW-1 is also a retired teacher. There was no reason for him to keep the mum for such a long period especially when he was knowing the so called atrocities of second party with his daughter.

18. Evidence of CW-2 Yuvaraj Gaikwad is also of not much consequence. His evidence in regard to allegations against the second party is like that of his brother- CW-1. From his evidence, it is very much clear that he is not a direct witness and also of vague nature. Therefore, the same does not inspire confidence in mind for establishing the allegations made against the second party in the charge sheet.

19. The third witness Shri Namdev Narore (CW-3) examined by the first party is a land lord of the second party. In addition, he is employee of first party and serves as computer operator at Kurul branch. He has given clear admission in the cross examination that he has come to depose in order to support his employer i. e. the bank and he also admits the fact that had he not deposed on behalf of the bank, it could have taken action against him and as such, he has come to depose. In view of such admissions,

it can certainly be said that this witness has not come before the Court on his own accord. He has also admitted that most of the part of his evidence is of hearsay evidence. He has also deposed that his evidence was recorded in a criminal case and the second party was acquitted in that matter. His evidence in my view does not throw light about the charges made against the second party in the charge sheet. Therefore, his evidence is also of no consequence to establish the contents of the chargesheet against the second party.

20. Smt. Seema Mehendale (CW-4) is the Police Inspector, who registered the offence against second party on report of CW-1 Trimbak Gaikwad. The first party has also filed certified copy of her deposition recorded in Sessions Case No. 53 of 1995. She was examined as prosecution witness No. 5 in that case. From her evidence, it is clear that, she after registration of offence against second party carried out initial investigation. She sealed articles like identity card, two photographs of ladies, etc. during search of the house of the second party. It is to be noted that she was also examined before the Enquiry Officer.

21. Her evidence, in this matter, in my view, can only be said to be of formal nature as she found *prima facie* material against second party to register the offence and to carry on the initial investigation. Her evidence, in no way is going to establish any of the charges made in the charge sheet.

22. The last witness examined by the first party is Anil Jadhav (CW-5), Sr. Branch Manager of Mohol branch. He deposed that as per banking manual the record of the bank are to be preserved for 10 years and thereafter after inspection by the banking party, the permission is granted to destroy the record.

In the cross examination, he has given vital admission that if some legal proceeding concerning to the bank are going on in the Court, then record of such matters are to be kept intact as per the rule. He expressed his ignorance whether the record pertaining to the second party is being kept intact.

In view of such evidence, it was expected by the first party to keep all the material concerning to the first party intact on the basis of which charge sheet have been alleged against him. However, no such record has ever been produced despite demands made by the second party. Therefore, adverse inference can certainly be drawn against the second party, for not producing the record on which it was relying in order to establish the fact that second party was helping Gaikwad family in banking transactions. In view of the aforesaid discussions, I come to the conclusion that the evidence tendered by the first party in no way goes to establish the ingredients of the charges made in the charge sheet.

23. It is also alleged in the first part of the charge sheet that prosecutrix Ms. Vidya committed suicide during

the trial due to grave mental injury caused by the second party as she could no longer bear the stigma of the society.

Trimbak Gaikwad (CW-1) in his evidence has tried to establish this fact by leading his oral evidence. It is to be noted that there is no independent report against the second party after committing of suicide by Ms. Vidya. The Ld. Sessions Judge in his judgment has also dealt with this aspect. Therefore, I find no substance in the allegations made in the later part of the charge sheet.

24. The charges against the second party is also regarding tarnishing the image of the first party in the society due to the alleged activities of the second party. No doubt, there was wide publicity in the local news paper after arrest of second party on the report of CW-1. Due to such news paper publication, the name of first party has certainly come into lime light, though not for good reason. That does not mean that the reputation of the first party has been adversely affected. It is to be noted that first party in order to substantiate this allegation has exclusively relied on the evidence of its employee Namdev Narote (CW-3), who has come before the court under pressure and involuntarily. According to this witness, due to news paper publication regarding activities of the second party, credibility of the bank has been shattered.

The second party has countered the aforesaid evidence by filing a chart (Exh. U-28/I) showing the business done by Mohol, Laxmi Dahiwadi and Solapur branches of the first party during 1995 to 1997. The facts and figures mentioned in the said chart clearly mention that deposits and advances during the said period have increased leaps and bounds. Had really there been any damage to the reputation of the first party or tarnishing its image in the society due to so called personal activities done by second party, there would not have been such huge progress in the banking business of the first party. Therefore, in my view the evidence tendered by the first party in this regard has been completely countered by the evidence tendered by the second party.

25. Had there been damage to the reputation of the first party, it would have certainly taken legal action like suing second party in the court of law claiming damages. But, it seems that no such action has ever been taken by the first party against the second party. Therefore, I have no hesitation to hold that the first party has again utterly failed to establish the later part of the charges made in the charge sheet against the second party.

26. While passing Award Part-I, this Court has already elaborately discussed regarding non payment of subsistence allowances, bias attitude and interestness of the enquiry officer, violation of procedure laid down in Bipartite settlement by the enquiry officer, non observance

of principles of natural justice during the enquiry, absence of logical inferences after considering the evidence on record, etc. Therefore, I need not dilate further on all these aspects in order to avoid repetitions.

27. Moreover, the Ld. Sr. Counsel Shri Mhetras has also placed reliance on the authorities again in order to substantiate his evidence and arguments. I have already discussed all these authorities elaborately in Award Part I dated 14-6-2011, in para Nos. 27 to 39. Therefore, I am not inclined to discuss all those authorities again in order to avoid repetitions.

However, Adv. Mhetras has placed reliance on more 7 authorities namely :—

(1) Piara Lal v/s. Lt. Governor and others [(2001 (88) FLR 329] Dehli High Court.

(2) Neera Kapilish v/s Presiding Officer, Labour Court and another [1999 (1) Bom. IC 254 (SC)].

(3) Prakash P. Mokashe v/s. State Bank of India and another [1985 II LLJ 145] Bombay High Court.

(4) Bombay Hospital Trust v/s. Rita Minwani and anr. [2005 (3) Bom. Cr 438] Bombay High Court.

(5) Babu Lal v/s. State of Haryana and others [1991 2 SSC 335].

(6) Canara Bank, Bombay v/s Eastern Mechanical Works, Bombay [2005 (5) Mh. L.J. 720]

(7) Vidhyadhar v/s. Mankikrao and another [AIR 1999 Supreme Court 1441].

28. In the first authority, the services of the employee were terminated in December, 1985. His termination was found to be illegal and unjustified and he was directed to reinstate in service with continuity of service with whole back wages. In this background, it is held that he is entitled to increments. D.A. and revision in pay scale, etc. as was granted to other employees from time to time in the category cadre of conductor.

In Neeta Kapilish case (Supra), the Labour Court found the enquiry was not fairly and properly held against the employee, who was a clerk in medical college. The Management was called upon to justify its action by fresh evidence. However, he did not produce any fresh evidence, except record of domestic enquiry. It is held by the Hon'ble Apex Court that record pertaining to the domestic enquiry do not constitute, "fresh evidence". as those proceeding already found by the Labour Court to be defective.

In our case also after passing Award Part I, the first party was given ample opportunity to establish the charges by fresh evidence. However, it did not lead any plausible and justifiable evidence to substantiate the charges. The first party has only examined those witnesses who were

mustly examined before the Sessions Court and also in the enquiry.

In the next authority of Prakash Mokashe (Supra), the Hon'ble Division Bench of the Hon'ble Bombay High Court after relying on various decisions of the Apex Court has come to the conclusion that the afforts of the bank for initiating action against the employee on the same set of facts is wholly misguided and not proper. In that matter also, the employee was acquitted all the charges of forgery and encashing the drafts.

In our case, also some when similar situation has arisen. The second party has been charge sheeted in a departmental enquiry mainly on offence of moral turpitude, in which he has already been acquitted and that decision has attained finality.

29. In the 4th authoirty of Bombay Hospital Trust (Supra), the Labour Court despite finding that enquiry was defective relied on the record and finding. The Hon'ble Bombay High Court has observed that, this could not have been done after the management availed of an opportunity of leading substantive evidence before the Court. The Labour Court should have considered the charge of misconduct on the basis of evidence before the Court. Therefore, the Labour Court has misdirected itself by not applying the test of a preponderance of probabilites which governs disciplinary proceedings.

In our case, this Court having declared departmental enquiry conducted by the first party as not fair and proper and legal, it was bounden duly of the first party to lead fresh substantive evidence before this Court. Having not done so, as discussed above, the charges levelled against the second party in the charge sheet has not been established.

30. In Babu Lal case (Supra), it is held by their Lordships of Hon'ble Apex Court that, after acquittal, from criminal charges, order of termination is found to be punitive, illegal and arbitrary and therefore, liable to be quashed. The aggrieved person is entitled to be reinstated.

In our case also relying on the ratio led down in this case once second party having been acquitted of serious charges of rape of intimidation and acquittal having a tained finality, there was no need for second party to initiate departmental enquiry on the same set of facts.

31. In Canara Bank case (Supra), in a civil suit for recovery of loan the defendant did not enter the witness box to state facts pleaded in the written statement and could not be cross-examined. Therefore, it is held by the Hon'ble Bombay High Court that, the defence of the defendant is liable to be rejected.

In our case also, the first party having failed to lead substantive evidence in order to support the charges

established relating to the damage to the reputation of the first party, the defence of the first party is liable to be rejected.

32. In the last authority of Vidhyadhar (Supra) the Hon'ble Apex Court has drawn adverse inference against the party to the suit, who did not enter the witness box.

In our case no doubt the first party has examined one of its employee Shri Narote to establish the charges of tarnishing the image of the bank due to the activities of the second party, but, as a really discussed there is no substantive piece of evidence like record which was available with the bank by which the second party alleged to have helped Gaikwad family in banking transactions, this court has already drawn an adverse inference against the first party in this regard.

33. The Ld. Sr. counsel for the first party has also filed written notes of arguments at Exh. C-36. I have gone through it minutely. He has tried to justify the fresh evidence on record on behalf of the first party. According to him, the first party has proved the charges levelled against the second party beyond reasonable doubt. I am of the view that, this is being civil matter, there is no question of proving the charges beyond reasonable doubt. Charges have not been proved even preponderance of probability. I am of the view that the first party has failed to esbtablished the charges.

34. In view of the aforesaid facts and circumstances, and after considering various ratios lead down in the aforesaid authorities. I come to the conclusion that, action of the first party in terminating the services of the second party on the alleged charges made in the charge sheet dated 10-10-1996 is not legal and justified. Accordingly, I answer this point in negative.

POINT No. 2

35. In the light of the settled position of law, the second party having suffered a lot since last 22 years, after his termination and he being in his fag end of his service, I am of the view that he is certainly entitled to reinstatement with continuity of service and 50% back wages. Accordingly, I answer this point. Hence, the following award :

AWARD

(1) The Reference (IT) No. 1 of 2001 is answered in negative.

(2) The second party i.e. employee Shri V. B. More is entitled to reinstatement with continuity of service and 50% back wages.

(3) The copy of Award be sent to the Appropriate Government i. e. Central Government immediately.

Place : Solapur

Dated : 21-4-2012

S. J. KALE, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.आ. 2631.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके के कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचाट (आई डी संख्या 230/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/562/1998-आई आर (सीएम-I)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 20th July, 2012

S. O. 2631.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 230/1999) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 20-7-2012.

[No. L-20012/562/1998-IR (CM-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

Present :

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 230 OF 1999

PARTIES : Employers in relation to the management of Govindpur Area No. III of M/s. BCCL and their workmen.

APPEARANCES :

On behalf of the workman : Mr. N. G. Arun, Union Rep.

On behalf of the employer : Mr. D. K. Verma, Ld.
Advocate

State : Jharkhand

Industry : Coal

Dhanbad, dated 14th June, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/562/98-C-1 dated 17-5-1999.

SCHEDULE

"Whether the action of the management of M/s. BCCL in not protecting the wages of Sri Santosh Bouri consequent upon his transfer to Category II, which carries lesser wages than his original position, is justified? If not, to what relief the workman is entitled."

Mr. N. G. Arun, the Union Representative for workman Santosh Bouri as well as Mr. D. K. Verma, the Ld. Advocate for the Management present but no witness for the evidence of the workman produced, inspite of ample opportunities and Regd. notices issued recently to the Union concerned for it. Meanwhile the Union Rep. has submitted that he did not get any response from the workman in respect of the evidence of the workman so it may be closed.

Perused the case record. It stands clear that it has all along been pending for the evidence of the workman in this case related to protection of his wages from 28-3-2006 for which several notices were also issued through Regd. Post. But no response of the workman to any of the notices shows that he has lost the interest in pursuing/contesting the case. Hence, the case is closed and accordingly it is passed an order of no longer any such industrial dispute Exist.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.आ. 2632.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचाट (संदर्भ संख्या 24/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/182/2005-आई आर (सीएम-I)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 20th July, 2012

S. O. 2632.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of Sijua Area of M/s. BCCL, and their workmen, received by the Central Government on 20-07-2012.

[No. L-20012/182/2005-IR (CM-I)]

AJEET KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD**
Present. SHRI KISHORI RAM, Presiding Officer
**In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947**
Reference No. 24 of 2006

Parties : Employers in relation to the management of E.J. Area, Bhowra of M/s. BCCL and their workman.

Appearances :

On behalf of the employee/workman : Mr. Raghunandan Rai, Rep of the workman

On behalf of the management : Mr. U.N. Lal, Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad the 7th June, 2012

ORDER

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal vide their Order No. L-20012/182/2005-IR (CM-I) dated 1-6-2006.

SCHEDULE

"Whether the demand of the Jharkhand Mines Lal Jhanda Mazdoor Union from the management of BCCL EJ Area that Smt. Alish Lakra may be promoted as Sr. Staff Nurse Gr. "B" justified? If so, to what relief is the workman entitled and from what date?"

2. The case of the sponsoring union is that workman Alish Lakra, who was appointed as Staff Nurse (T) in Grade D on 12-1-1991, was regularised in the staff Nurse, Grade 'C' on 12-1-1992 since then she has been serving satisfactorily without a complaint though she was given the financial benefit under S.L.N. in Grade 'B' she was not promoted to the Senior Staff Nurse in Grade 'B' on 12-1-1997 which was due on completion of her five years in Gr. 'C' fulfilling all requisites to the post of Sr. Staff Nurse Gr. B under the Cadre Scheme of the Company. She had submitted her complete educational qualification certificate to the Central Hospital, Dhanbad, for verification as per the Office Letter No. 64/138/4-34 dt. 6-12-97 of the Dy. Chief Personnel Manager, Koyla Bhawan, Dhanbad, but of no effect till now, for which she kept on requesting. She is entitled to promotion to the post of Senior Staff Nurse, Grade 'B'.

Further case of the workman with specific denials in her rejoinder is that the Management has never displayed any copy of Seniority List, promotion does not depend upon the availability of vacant posts. The determination

of number of the posts of different Grades by the Management against that of vacant posts is arbitrary. There is no relation of vacancy with promotion from Grade 'C' to 'B', as the change of duty for both Grade is the same in respect of Doctors & nurses as usual, for there is single kind of duty/work after promotion in the Grade of different level. The condition of vacancy for the post is not applicable to promotion of Doctors. Promotion in special Grade itself occurs on the completion of definite time in the Lower Grade. So the condition of vacancy for the post regarding the nurse is concocted, discriminatory and unjust.

3. Whereas, categorically denying the allegation of the sponsoring union, the case of the management, the case of the Management is that as per the settlement dt. 10-4-2004 between the Management and the Union that the Management would forward the case of eligible Nurse to BCCL H. Qr. for their promotion as per Cadre Scheme and vacancies etc., the management after collecting the educational and professional certificate with complete bio-data from the concerned employees including Mrs. Alish Lakra and Mrs. Parul Minz under Sl. No. 5 & 3 respectively sent it to the General Manager (NEE), BCCL, Koyla Bhawan as per letter No. Per.EJ/27/BML-JM3/2004/5205 dt. 14-7-2004. The promotion from T & S Gr. 'C' to 'B' is being done by the Head Quarter. The matter was examined and the Corporate Office by its letter No. BCCL/PA.V/EJ At/Estb/04/4996 dt. 2/4-8-2004 had informed that as also communicated to the Dy. Chief Medical Officer, Bhowra Hospital as well as to the concerned employee there was no vacancy in T & S Gr. 'B' at that time. There were many senior to the workman as per published Seniority List of Staff Nurses in T & S Gr. 'C'. Thirty-two Staff Nurses have been promoted through the DPC to the post of Sr. Staff Nurse in T & S Gr. 'B' as per the Office No. BCCL/ PA-V : DPC Paramedical : 2007: 7654-7705 dt. 27-12-2007 whereby the promotion could be given as per existing vacancies upto Parul Minz as she had got promotion to the post of Staff Nurse in T & S Gr. 'C' on 14-9-1991 No Junior to per superceded her in Gr. 'B'. The Seniority position of the workman stands at Serial No. 46 which would be considered along with other eligible candidate whenever further vacancies available. So the demand of the Union for promotion of the workman is unjustified, as promotion is allowed to the eligible employees to the next higher grade as per stipulation made in the Cadre Scheme formulated by J BCCL and against available vacancies.

FINDING WITH REASONING

4. In this case, WW 1 Alish Lakra, the workman for herself and MW 2 Sijuaram Tiwari, Sr. Legal Inspector for the Management have been examined.

The statement of WW 1 Alish Lakra, the petitioner herself is that despite her requisite qualifications I.A. General Nursing and Diploma in midwifery (Ext. W. 2 to 4

respectively) and as per the Seniority List (Provisional) dtd. 24-9-2007 of the Chief Personnel Manager (NEE), BCCL, Koyla Bhawan Dhanbad (Ext. W.1 on formal proof waived) which bears her name under its Sl. No. 31 the name of her junior Payari Barwa, the staff nurse of Regional Hospital, Katras stands under its Sl. No. 75 who was promoted to Grade 'B' as per the Office Order dtd. 11-3-2004 (wrongly written in stead of dtd. 25-2-1-3-2004) of Dy. C.M.O. Regional Hospital, Katras (Ext. 6 with objection) whereas she was not promoted to Senior Staff Nurse Gr. 'B' due on 12-1-1997 even after completion of her five years' working in Grade 'C' since regularisation in it on 12-1-1992 as per the Cadre Scheme of the Company. But the petitioner has admitted the promotion of P. Barwa and two others to the Grade 'B' effected by the said office order of the Regional Hospital Katras (Ext. W.6 with objection) which was not issued by the Head Quarter, Koyla Bhawan Dhanbad. She (Petitioner) had been along posted in Eastern Jharia Area, Bhowra since 1991 and the Area is another region. The indisputable fact as stated by her is that she got SLU in 2001 and Jan, 2009 as per NCWA Provision, and but Subala Kumari and Nirupa Kumari under Sl. No. 1 & 2 respectively who were Senior to her (Petitioner) as per the Office Order dtd. 18-11-2010 of the BCCL, H. Qr. (Ext. W.5) were promoted to the Grade 'B' in pursuant to the Centralised List (Ext. W.18) as well as former Centralised Seniority List dtd. 24-9-2007, both bearing the name of the petitioner under Sl. No. 31, and out of the list promotion was effected up to aforesaid Nirupa Kumari under Sl. No. 23 as asserted by MWI Siya Ram Tiwary. None of the employees has been superceded in their promotion since the centralisation of it. The evidence of MWI affirms that previously not any employee was promoted in the E.J. Area of BCCL, so the claim of the petitioner for the promotion as claimed is not justified.

5. After hearing the arguments of the Union Representative Raghunandan Rai and Mr. U. N. Lal, Ld. Advocate for the management over it and in view of the aforesaid discussed facts, I find that as per the provision of NCWA, promotion to the post of Senior Staff Nurse is effected through the D.P.C. against the post vacant, and in case of no vacancy for it, the S.L.U. was granted twice to the petitioner; and thereafter, she has been promoted to Senior Staff Nurse Grade 'B' on 18-11-2010 as per the Office Order of the Management dtd. 18-11-2010. Hence, it is held that the demand of the Jharkhand Mines Lal Jhanda Mazdoor Union from the Management of BCCL, E.J. Area that Smt. Alish Lakra may be promoted as Senior Staff Nurse Grade 'B' being vague is unjustified, as she has got her aforesaid due promotion. So she is not entitled to any relief as claimed by her.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.आ. 2633.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के

प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारी नं. 1, धनबाद के पंचाट (आई डी संख्या 16/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एस-20012/159/2004-आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 20th July, 2012

S. O. 2633.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 16/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 20-07-2012.

[No. L-20012/159/2004-IR (CM-I)]

AJEEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 1), DHANBAD

In the matter of a reference under Section 10(1)(d)(2A)
of the Industrial Disputes Act., 1947

Reference No. 16 of 2005

Parties : Employers in relation to the management of
M/s. BCCL

And

their workman

Present :— Shri Hari Mangal Singh, Presiding Officer

Appearances :

For the Management : Sri D.K. Verma,
Advocate

For the Union/workman : None

State:— Jharkhand Industry: Coal

26th June, 2012

AWARD

By Order No. L-20012/159/2004-IR (C-I) dated 17-12-2004 the Central Government in the Ministry of Labour has in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:—

“Whether the demand of the Bihar Colliery Kamgar Union from the management of M/s. BCCL, Koyla Bhawan, for employment to Smt. Sova Devi the dependent wife of Late Tulsingh Singh is justified. If so to what relief is said Smt. Sova Devi entitled?”

On 7-6-12 was the date fixed for filing rejoinder by the workmen and documents by the parties. But in spite of sending two notices to the sponsoring Union none was present on behalf of the Union nor workman concerned was present. So it appears that neither the concerned workman nor the sponsoring Union is interested to contest the case.

In view of such circumstance I rendered a "No Dispute" Award in the present reference case.

H. M. SINGH, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.आ. 2634.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचाट (आई डी संख्या 267/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/139/1999-आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 20th July, 2012

S. O. 2634.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 267/1999) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 20-07-2012.

[No. I.-20012/139/1999-IR (CM-I)]

AJEEET KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD
PRESENT. Shri Kishori Ram, Presiding Officer
In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act., 1947
Reference No. 267 of 1999**

Parties : Employers in relation to the management of P.B. Area, of M/s. BCCL and their workman.

Appearances :

On behalf of the : Mr. N.G. Arun, Union Rep.
workman

On behalf of the : Mr. B.N. Prasad, Ld. Adv.
employers

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 13th June, 2012

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/139/99-IR (C-I) dated 15-7-1999.

SCHEDULE

"Whether the action of the Management P.B. Area of Balihari Colliery of M/s. BCCL in denying employment to Smt. Tara Devi, wife of Shri Sube Lal Paswan after the death of the workman, under the provision of N.C.W.A.V. is proper and justified? If not, what reliefs is the dependant wife of the said workman entitled to?"

2. Neither Mr. N.G. Arun, the Union Representative nor the petitioner Tara Devi appeared nor WW produced for her evidence. But Mr. B.N. Prasad, the Ld. Advocate for the Management is present.

Perused the case record. I find the case has been all along pending for the evidence of the workman/petitioner since 25-11-2004, for which several including three Regd. Notices recently issued but even then no witness for the evidence of the petitioner has been produced even after giving last chance earlier. The very conduct of the Union Representative/petitioner shows that they are least concerned with their liability to produce the witness on behalf of the petitioner in the case of employment. So they are disinterested in pursuing the case. Hence the case is closed and accordingly it is passed an order of no Dispute of any industrial issue.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.आ. 2635.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचाट (आई डी संख्या 264/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/326/2001 आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 20th July, 2012

S.O. 2635.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 264/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 20-07-2012.

[No. I.-20012/326/2001-IR (CM-I)]

AJEEET KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD**

PRESENT. Shri Kishori Ram, Presiding Officer
In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

Reference No. 264 of 2001

Parties : Employers in relation to the management of Sendra Bansjora Colliery of M/s. BCCL Sijua Area and their workman.

Appearances :

On behalf of the workman : Mr. N.G. Arun, Union Rep.
On behalf of the employer : Mr. D.K. Verma, Ld. Advocate
State : Jharkhand Industry : Coal

Dhanbad, Dated the 14th June, 2012

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/326/2001.IR (C-I) dt. 21-9-2001.

SCHEDULE

"Whether the demand of the R.C.M.S. for regularisation of Sri Munna Ram from P.R. M/Loader to P. R. Trammer from the management Sendra Bansjora Colliery of M/s. BCCL is justified? If so, to what relief is the concerned workman entitled and from what date?".

2. Mr. N.G. Arun, the Union Representative for workman Munna Ram present just as Mr. D.K. Verma, the Ld. Advocate for the Management is present, but no M.W. produced. The Ld. Advocate-cum-Union Representative Mr. N.G. Arun declines to pursue the case on the ground that he has not got any response from the workman despite his best efforts, so it may be closed.

Perusal of the case record manifests its tendency for the evidence of Management since 19-1-2006 whereas the workman's case/evidence was already closed as per order dt. 16-8-2005 of the Tribunal in the present case related for the regularisation of workman from P. R.M./ Loader to P.R. Trammer. As such the present case is without any evidence of the workman. This is the oldest case of the year 2001. Hence the case is closed and an order of no dispute is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.आ. 2636.—औद्योगिक विवाद अर्थशनयम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मी एम डी आई एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण नं. 1, धनबाद के पंचाट (आई डी मंड़ा 33/1991) को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/194/1990 आई आर (मीएम 1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 20th July, 2012

S. O. 2636.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 33/1991) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. CMPDIL and their workmen, received by the Central Government on 20-07-2012.

[No. L-20012/194/1990-IR (CM-1)]

AJEEIT KUMAR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (No. 1), DHANBAD**

In the matter of a reference under Section 10(1)(d) (2A) of the Industrial Disputes Act., 1947

Reference No. 33 of 1991

Parties : Employers in relation to the management of M/s. CMPDIL

And

their workman

Present :—Shri Hari Mangal Singh, Presiding Officer

Appearances :—

For the Management : Sri B.K. Singh Dy. Manager

For the Union/workman : None

State : Jharkhand Industry : Coal

Dated, 25th June, 2012

AWARD

By order No. L-20012/194/90-IR (C-I) dated 11-4-1991 the Central Government in the Ministry of Labour has in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :—

"Whether the action of CMPDIL management in not regularizing Sri J.N. Poddar and 22 others

attached to DR-2000 Machine from the initial date of appointment and not paying them proper/prescribed category of wages according to jobs performed by them is justified? If not what relief these workmen are entitled?"

Sri B.K. Sinha, Dy. Manager appearing in this case submitted that the Union is not appearing before this Tribunal in spite of two regd. notices given by the Tribunal and he also prayed to pass necessary order in this matter.

It appears from the record that this case relates to the year 1991 i.e. 21 years old.

In such circumstance, as per record and also submission on behalf of the management, I render a "No Dispute" Award in the present reference case.

H. M. SINGH, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

कानू. अ. 2637.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की आरा 17 के अनुसरण में केन्द्रीय सरकार औद्योगिक प्रबंधन की ओर संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुषंघ में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचाट (आई डी संख्या 56/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/266/2003-आई आर (सीएम-1)]

अजीत कुमार, अनुपाग अधिकारी

New Delhi, the 20th July, 2012

S. O. 2637.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 56/2004) of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 20-07-2012.

[No. L-20012/266/2003-IR (CM-I)]

AJEEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT. Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

Reference No. 56 of 2004

Parties : Employers in relation to the management of Civil Engineering Deptt. of M/s. BCCL and their workmen.

Appearances :

On behalf of the workman : None

On behalf of the employer : Mr. U.N. Lal, I.d. Advocate

State : Jharkhand Industry : Coal

Dhanbad, Dated the 13th June, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/266/03-IR (C-I) dt. 26-4-2004.

SCHEDULE

"Whether the demand of the Bihar Janta Khan Mazdoor Sangh from the management of Civil Engineering Deptt. of M/s. BCCL for restoring the normal date of increment of Sri Babulal Shaw on 1st March every year w.e.f. 1-3-98 is justified? If so, to what relief is the concerned workman entitled?"

2. Non representation of the Union/workman Babulal Shaw on 16-9-2005 when he was summoned for the evidence of the workman despite three Regd. notices issued continuously. But Mr. D.K. Verma, the Lt. Advocate for the Management is present.

From the perusal of the case record, I find that this case has been pending for evidence of the workman since 6-2-2006 after the partial examination of the WW I Babulal Shaw, the workman himself on 16-9-2005. But he was never cross examined by the Management. It appears from the conduct of the Representative Union and the workman that they are disinterested/unwilling to pursue the case.

Under these circumstances, proceeding with the case for uncertainty is wastage of time and energy. Hence the case is closed and accordingly an order is passed as non-existent Industrial Dispute.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

कानू. अ. 2638.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की आरा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट एंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुषंघ में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नालपुर के पंचाट (संदर्भ संख्या 74/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/4/2005-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 20th July, 2012

S.O. 2638.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 74/2005) of the Central Government Industrial Tribunal-cum-Labour

Court Nagpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 20-07-2012.

[No. L-12012/4/2005-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Party No. 1 : The Branch Manager,
State Bank of India, Camp Branch,
Amravati, Tahsil & Distt. Amravati.

Versus

Party No. 2 : Shri Anil S/o Sheshrao Dahiwale
R/o C/o Shri Champatraoji Wankhede
Rahul Nagar, Bicchu Takdi, Camp
Amravati, Distt. Amravati.

AWARD

(Dated: 28th June, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of State Bank of India and their workman, Shri Anil Dahiwade, for adjudication, as per letter No. L-12012/4/2005-IR (B-I) dated 5-9-2005, with the following schedule:—

"Whether the action of the management of State Bank of India through its Chief Manager Amravati Branch Amravati in terminating the service of the workman Shri Anil S/o. Shri Sheshrao Dahiwale w.e.f. 8-9-2004 is legal and justified? If not, to what relief the workman is entitled?".

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Anil Sheshrao Dahiwale, ("the workman" in short), filed the statement of claim and the management of State Bank of India, ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that he has passed XII standard and he was working with party no. 1 at Amravati Branch w.e.f. 7-4-1999, as a messenger in class IV category and no appointment order was issued at the time of his appointment and he was treated as temporary employee and his salary was being paid by Bankers cheques and he was not given the benefits of casual leave and medical leave etc. and benefit of provident fund and ESI, even though, such privileges were granted by party no. 1 to

other similarly situated employees and initially he was paid Rs. 50 per day as wages, which was subsequently raised to Rs. 80 per day and when he insisted for regular salary and benefit of permanency, his services orally came to be terminated on 8-9-2004, without compliance of the legal provisions as envisaged under section 25-F of the Act and therefore, his termination from services is illegal, improper and contrary to law and he had completed 240 days of work, preceding to his alleged oral termination i.e. from 18-12-2003 to 8-9-2004 and on 13-9-2004, he gave an approach notice through his advocate for conciliation and his reinstatement, but the party no. 1 failed to take any action. The further case of the workman is that the party no. 1 is an industry and he is a workman as per the definition of section 2 (S) of the Act and though he was working since the year 1999, party no. 1 was giving technical breaks, only with the intention to deprive him the benefits of permanency and at the time of termination of his services, neither one month's notice nor retrenchment compensation was given to him and party no. 1 retained Yogesh Bobade and Dnyaneshwar Bhoyar, who were juniors to him, in violation of the provision of Section 25-G of the Act and party no. 1 in violation of Rule 81 of the Industrial Disputes (Central) Rules did not publish the seniority list and on that count also, his termination is illegal and after termination of his services, party no. 1 engaged new persons, namely, Ravi Vinchurkar and Rahul Kamble in his place and thus violated the provision of Section 25-H of the Act and his is entitled for reinstatement in service with continuity and full back wages.

3. The party no. 1 in their written statement has pleaded inter-alia that the engagement of the workman was purely on casual, daily wage, part time temporary basis and there was no continuity in service and his engagement for some days was for doing the jobs pertaining to clearing of branch premises, watering the garden and other misc. work including doing Hamali work and cleaning of the courtyard of branch and different works were carried out in different periods and each engagement was distinct and separate and there was no continuity within the intervals, by nature of specific work or period of work and the engagement of the workman was purely contractual and his contract was coming to an end upon his termination as non-availability of work for any period and payments were made to the workman as per the contract and the workman was engaged on lumpsum basis, without mentioning the number of days of his engagement or as to when the work assigned was to be completed by him and there was no retrenchment of the services of the workman and the workman himself left the job and the contract was not renewed. It is further pleaded by the party no. 1 that it appears that the workman has calculated his wages at the rate of Rs. 80 per day and even if, the lumpsum amount paid is taken to be towards payment of daily wages of Rs. 80 per day, the total days worked by the workman

come to 219 days from December 2003 to 10-9-2004, taking the amount paid to him during that period into consideration and the workman did not work for 240 preceding calendar year in which year he was alleged to be disengaged and the workman left the work on his own volition, as he wanted a permanent job and the engagement of the workman on contractual basis was done by the branches, who had no authority to appoint any person in such category and such appointment was illegal and impermissible, under the rules of the bank and such illegality cannot be perpetuated for indefinite period and the workman is not entitled to claim absorption or permanency. The further case of the party no. I is that as the workman did not work for 240 days in the preceding year from the date of alleged disengagement, there was no legal requirement of giving one month's notice and payment of retrenchment compensation to the workman and no junior to the workman was retained by them and as the engagement of the workman was not on permanent basis, there was no need to record any seniority list, so there was no question of violation of Rule 81 of the Industrial Disputes (Central) Rules and no new person was engaged by the bank in place of the workman and the workman is not entitled to any relief, much less as prayed for.

4. Besides placing reliance on documentary evidence, the workman has examined himself as a witness to prove his case. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim and rejoinder. However, in the cross-examination, the workman has admitted that the Bank was paying him wages under vouchers, after verifying the application submitted by him mentioning the amount of wages due for working in the Bank and the vouchers, Exts. M-I to M-VIII are true and whenever he had received any amount from the Bank, he had signed receipt for the same and he was working as a temporary employee in the Bank and he was working as a Mali, taking care of the garden and also sweeping the premises of the Bank and payment of wages was made to him weekly by the bank and at the time of his engagement, no appointment letter was issued and he did not appear in any interview or written examination, before his engagement and his name was not sponsored by the Employment Exchange and there was no police verification or medical examination for his engagement in the Bank. The workman has denied the suggestion that he did not work for 240 days preceding the 12 calendar months of 8-9-2004 and that his engagement was not contract basis.

5. The workman has also examined one Dnyaneshwar Bhoyar as a witness in support of his claim. This witness has stated in his examination-in-chief that he worked as a peon from January 2004 till January/February 2006 and when he started working with party no. I, the workman was already working as a peon and the services of the workman were terminated on 10-9-2004 and the

workman was working as a peon since December 2003 continuously till his termination. In his cross-examination, this witness has admitted that Bank had not issued any appointment letter to him and he has not filed any document to show that he worked after 25-10-2004 with the Bank and he did not work with the Bank after 25-10-2004 and had not seen the appointment order, muster roll or termination order of the workman.

6. The party no. I did not adduce any oral evidence in support of their stands taken in the written statement. However, the party no. I placed reliance on documentary evidence filed on record.

7. At the time of argument, it was submitted by the learned advocate for the workman that it is proved beyond doubt from the evidence adduced by the workman that he had worked for more than 240 days in the year preceding his termination on 8-9-2004 and at the time of termination of his services, the mandatory provisions of section 25-F of the Act were not complied with and as such, the termination amounts to retrenchment and as the termination of the workman is illegal, he is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the party no. I in the written notes of argument that the engagement of the workman was purely contractual and it is clear from the documents filed by the Bank that the workman did not work for 240 days in the preceding year of the date of his alleged termination and he left the work of his own and the appoint of the workman was illegal, as the Branch Manager, who had appointed the workman had no power to appointment and the workman was appointed without following due procedure for making appointment in public sector and as such, there was no need to comply the provisions of section 25-F of the Act and the workman is not entitled to any relief.

In support of such contentions, reliance was placed by the learned advocate for the party no. I on the decisions reported in AIR 2006 SC-1806 (Secretary, State of Karnataka Vs. Umadevi).

9. Perused the record including the evidence, both oral and documentary adduced by the parties and considered the submissions made by the learned advocates for the parties. From the materials on record, it is found that the engagement of the workman by party no. I was temporary in nature on daily wages and his appointment was not a regular appointment or as per the Recruitment Rules of party no. I.

10. As the party no. I has denied the claim of the workman that he had worked for more than 240 days in the preceding 12 months of the date of termination i.e. 8-9-2004, it is necessary for the workman to prove that he had in fact worked for 240 days in the preceding 12 months of 8-9-2004. For better appreciation of the dispute, I think

it apposite to mention about the settled principles enunciated by the Hon'ble Apex Court in this regard.

11. The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (*Employees, Digawadih Colliery Vs. Their workmen*) have held that :—

"Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(ee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25-B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary, if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

12. In the decision reported in AIR 1981 SC-1253 (*Meharlal Vs. M/s. Bharat Electronics Ltd.*), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14 of 1947). Section 25-F (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service)

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

13. The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (*M/s. Essen Deinay Vs. Rajeev Kumar*) have held that:

"Industrial Disputes Act (14 of 1947- S. 25-F, 10-Retrenchment compensation-Termination of services without payment of Dispute referred to Tribunal-Case of workman/ claimant that he has worked for 240 days in a year preceding

his termination-Claim denied by management-Onus lies upon claimant to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary, the affidavits of the workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

14. The Hon'ble Apex Court in the decision reported in (2005) 5 SCC-100 (*Reserve Bank of India Vs. S. Mani*) have held that:—

"Industrial Disputes Act, 1947-Ss. 25-F, 25-N, 25-B and II-240 days' continuous Service-Onus and burden of proof with respect to-Evidence sufficient to discharge-Failure of Employer to prove a defence (of abandonment of service) if sufficient or amounted to an admission, discharging the said burden of proof on the workman discharged, merely because employer fails to prove a defence or an alternative plea of abandonment of service- Filing of affidavit of workman to the effect that he had worked for 240 days continuously or that the workman had reported representations or raised demands for reinstatement, is not sufficient evidence that can discharge the said burden-Other substantive evidence needs to be adduced to prove 240 days' continuous service- Instances of such evidence given.

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service.

Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had in fact, worked for 240 days in a year. Such evidence might include proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period or the terms and conditions of his offer of appointment, or by examination of any other witness in support of his case.

15. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary for the workman to prove that he worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

16. In this case, besides the oral evidence of himself and witness, Dnyaneshwar Bhoyar, the workman has relied on the documents, W-I to W-XXVIII filed by him and so also Exts. M-I to M-VII, the documents filed by party no. I.

So far the documentary evidence is concerned, Exts. W-I to W-VI are the copies of notice issued by the workman to the Bank, Postal A.D. and the two applications said to be filed by the workman under the RTI Act. The said documents are of no help to the workman to prove about the days he worked with the Bank. Exts. W-V to W-XX and W-XII to W-XXVIII are copies of Bankers cheques, under which, wages were paid to the workman for working with the Bank, party no. 1. In none of the said documents and so also in Exts. M-I to M-VIII, the number of days worked by the workman has been mentioned.

It is necessary to mention here that according to the reference, the date of the alleged termination of the workman was 8-9-2004. The workman has also claimed in the statement of claim and in his evidence that he was terminated on 8-9-2004. However, at some places, he has claimed that he was terminated on 10-9-2004 (last but one line of paragraph 2 of the statement of claim, paragraphs 2 and 3 of his rejoinder, last but one line of para 2 of his affidavit, in para 4 of his affidavit). However, Exts. W-XXIII to W-XXVIII relate to period from 15-9-2004 to 25-10-2004. It is not known as to why and for what payment was made to the workman under Exts. W-XXIII to W-XXVIII when his services were terminated on 8-9-2004. Taking the claim of the workman that he was getting Rs. 80 per day as wages to be true and on the basis of the same, the total amount received by the workman under the documents Exts. W-V to W-XX and W-XII and M-I to M-VIII is divided by 80, the total working days of the workman come to 129 ½ or say 130 days. If the documents Exts. W-XXIII to W-XXVIII are also taken into consideration holding that under those documents also wages relating to the period up to 8-9-2004 were paid to the workman, still then, on calculation, the total working days of the workman came to at best to 150 days. Besides those documents, there is no other document to show as to for how many days, the workman had actually worked in the preceding 12 months of 8-9-2004. From the evidence on record, it is found that, the workman has failed to prove that in fact he had worked for 240 days in the preceding 12 months of 8-9-2004. Hence, it is found that the provisions of Sections 25-F of the Act have no application to the case of the workman. Hence, it is ordered:—

ORDER

The action of the management of State Bank of India through its Chief Manager Amravati Branch Amravati in terminating the service of workman Shri Anil S/o. Shri Sheshrao Dahiwale w.e.f. 8-9-2004 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.आ. 2639.—ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसार में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कोरपोरेशन लिमिटेड मार्केंटिंग डिविजन मुम्बई के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/प्रम म्पायालय नं. 1, मुम्बई के पंचाट (संदर्भ संख्या ५/२००५) को प्रकाशित करती है जो केन्द्रीय सरकार को ९-७-२०१२ को प्राप्त हुआ था।

[सं. एल-30012/66/2004 आई आर (एम)]

जोहन तोपना, अवर सचिव

New Delhi, the 20th July, 2012

S.O. 2639.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 9/2005) of the Central Government Industrial Tribunal/Labour Court No. 1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. Marketing Div (Mumbai) and their workman which was received by the Central Government on 9-7-2012.

[No. L-30012/66/2004-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

JUSTICE G.S. SARRAF, Presiding Officer

Reference No. CGIT-1/09 of 2005

Employers in relation to the management of B.P.C.L.

And

Their workman (S.R. Kamble)

Appearances :

For the Management	:	Mr. R.S. Pai, Adv.
for the workman	:	Mr. J. Sawant, Adv
State	:	Maharashtra

Mumbai, dated 8th May, 2012

AWARD PART-I

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of reference given in the schedule are as follows:

Whether the action of the management of BPCL, Marketing Division, Mumbai in awarding punishment of reduction in basic pay by 2 stages in respect of Shri S.R.Kamble is justified? If not, to what relief Shri S.R.Kamble is entitled to?

2. The workman S.R.Kamble was issued a chargesheet dtd.17-12-1999 which is as under:

You were on duty in the 3rd shift on 4-9-1999 with Shri R.F.Kahane, HVD on Company Tank lorry No. MH-OJ-H-1908 carrying mix-load of 5 KL HSD under Invoice No. 420418 dated 5-9-99, 10 KL MS-87 & 5 KL Unleaded Petrol under Invoice No.420417 dated 5-9-99 to M/s. Vikram Auto Services, Andheri (West). The said Tank lorry reached the above Outlet on 4/5-9-99 midnight.

After checking Dip and Density verification of the product, you first decanted HSD into HSD tank after Dealer's representative opened the inlet of. HSD tank. Subsequently you had decanted MS 87 into MS 87 tank after Dealer's representative opened the inlet of MS 87 tank.

While the Dealer's representative was busy in preparing the cheque, You on your own opened the inlet of HSD tank and decanted 5 kl of unleaded petrol into HSD tank at the said Retail Outlet.

Your above act has resulted in the contamination of 5000 ltrs. of Unleaded Petrol with 10319 ltrs. HSD in the tank. Thus, total contamination of 15319 ltrs. of petroleum products has caused financial loss to the Corporation.

Your above act tantamounts to a serious act of misconduct if proved, in as much as you have acted negligently in the performance of your duty.

3. The workman denied the charges. The management conducted departmental enquiry. Both the sides led evidence. The Enquiry Officer found the workman guilty of the charges levelled against him. The Disciplinary Authority thereafter forwarded a copy of the report to the workman. After considering the representation dt.11-10-2002 of the workman, the Disciplinary Authority by order dt.27-1-2003 imposed the punishment of reduction in basic wages by two stages in the grade.

4. According to the statement of claim filed by the General Secretary, Petroleum Employees Union (hereinafter referred to as the union) the findings of the Enquiry Officer are perverse. The Enquiry Officer was biased and he failed to appreciate the evidence properly. The Disciplinary Authority without application of mind concurred with the findings of the Enquiry Officer and imposed the punishment. The incident which occurred on 4-9-1999 was merely an operational error which occurred due to circumstances beyond the control of the workman. The responsibility to check that whether the hose has been properly connected or not is that of the dealer and the workman cannot be blamed for the lapse of the dealer. The mistake happened due to wrong direction given by the representative of the dealer. The management did not produce L.B.Upadhyay for cross examination in order to withhold the truth. The punishment imposed on the workman is unjustified.

5. According to the written statement the workman fully participated in the enquiry along with his defence representative Satish Kumar Nair. The Enquiry Officer after considering the documentary and oral evidence on record found the workman guilty of the misconduct as charged against him. The Disciplinary Authority forwarded a copy of the enquiry report to the workman and after considering the representation of the workman imposed the punishment. The enquiry was conducted in accordance with the principles of natural justice and the Standing Orders applicable to the workman. The workman did not raise any objection during the enquiry and did not level any allegation against the Enquiry Officer. The Disciplinary Authority imposed the punishment after application of mind and after considering the report of the Enquiry Officer and the representation submitted by the workman. The Disciplinary Authority also considered the past record of the workman and took a lenient view in the matter. The act of the workman amounted to gross negligence and not merely an operational error. On account of the gross negligence of the workman 15,319 litres of petroleum products were contaminated. According to the management the reference is liable to be dismissed.

6. What is to be seen here at this stage is whether the enquiry held against the workman is not fair and proper and whether the findings of the Enquiry Officer are perverse.

7. Neither party has filed any affidavit or has examined any witness.

8. Heard rival submissions.

9. The workman was represented by a defence representative in the enquiry. Both the parties led evidence before the Enquiry Officer. It has not been contended that the workman was not given full opportunity to cross examine the management witness. The Enquiry Officer in his report discussed and analysed the evidence of the parties. After examination of L.B.Upadhyay the enquiry was adjourned on the request of the workman and thereafter inspite of adjournments L.B.Upadhyay did not come and, therefore, it is not correct to say that the management withheld the truth. The Enquiry Officer rightly deleted his deposition.

10. As a matter of fact error on the part of the workman is admitted in the statement of claim but it is stated there that it was an operational error due to the circumstances beyond the control of the workman. It is not made clear what were those circumstances and how it was beyond the control of the workman. It is also stated in the written statement that the mistake occurred due to the wrong direction given by the representative of the dealer but the name of the representative has not been disclosed.

11. I have gone through the enquiry proceedings and I have no reason to think that the enquiry was not fair and proper. The Enquiry Officer has reached his conclusion after discussing the evidence on the record and as such the report of the Enquiry Officer cannot be said to be perverse.

12. In view of the above discussion I have come to the conclusion that the enquiry conducted against the workman was fair and proper and there is no reason to hold that the findings of the Enquiry Officer are perverse.

13. Award Part-I is passed accordingly.

14. It is now to be considered that whether the punishment awarded to the workman is disproportionate to the charge proved against him and for this the reference is adjourned to 11-5-2012 for Award Part-II.

JUSTICE G. S. SARRAF, Presiding Officer

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. 1- MUMBAI**

JUSTICE G.S. SARRAF, Presiding Officer

REFERENCE NO. CGIT-1/9 of 2005

Employers in relation to the management of

B.P.C.L.

And

Their workman (S. R. Kamble)

Appearances:

For the Management : Mr. R.S.Pai, Adv.

For the workman : Mr. J. Sawant, Adv.

State : Maharashtra

Mumbai, dated the 14th May 2012

AWARD PART-II

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of reference given in the schedule are as follows :

Whether the action of the management of BPCL, Marketing Division, Mumbai in awarding punishment of reduction in basic pay by 2 stages in respect of Shri S. R. Kamble is justified? If not, to what relief Shri S.R.Kamble is entitled to?

2. It is not necessary to narrate the facts here as the facts in detail have been stated in Award Part-I.

3. What is to be seen here is that whether the punishment of reduction in basic wages by two stages in the grade imposed on the workman is justified or not or whether the above punishment is shockingly disproportionate to the charge levelled against the workman.

4. Heard rival submissions of learned counsels for the parties.

5. The charge against the workman is that he decanted 5kl of unleaded petrol into HSD Tank and thereby contaminated a total of 15,319 litres of petroleum products and caused financial loss to the Corporation.

6. This Tribunal has held in Award Part-I passed on 8-5-2012 that there was no violation of the principles of natural justice and that the findings of the Enquiry Officer are not perverse. If the enquiry is fair and proper than in the absence of an allegation of victimisation or unfair labour practice I am not inclined to interfere with the punishment imposed. This Tribunal does not act as a Court of appeal and substitute its own judgement for that of the management.

7. Considering all the facts and circumstances of the matter I do not think that the punishment is shockingly disproportionate to the charge levelled against the workman so as to warrant interference by this Tribunal.

8. The workman is, therefore, not entitled to any relief.

9. Award Part-II is passed accordingly.

JUSTICE G.S. SARRAF, Presiding Officer

नई दिल्ली, 20 जुलाई, 2012

का.आ. 2640.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स न्यू इंडिया इंश्यूरेंस कंपनी लिमिटेड भुवनेश्वर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 13/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-7-2012 को प्राप्त हुआ था ।

[सं. एल-17012/4/2006 आई आर (एम) |

जोहन तोपनो, अवर सचिव

New Delhi, the 20th July , 2012

S.O. 2640.—In pursuance of Section 17 of the Industrial disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No 13/2006) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. New India Assurance Co. Ltd. (Bhubaneswar) and their workman, which was received by the Central Government on 9-7-2012

[No. I-17012/4/2006-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
BHUBANESWAR**

Present : Shri J. Srivastava, Presiding Officer,
C.G.I.T.-cum-Labour
Court, Bhubaneswar.

Industrial Dispute Case No. 13/2006

Date of Passing Award - 30th May, 2012

Between : The Chairman-cum-Managing Director,
NIAC, 87, New India Assurance Co. Ltd.,
Mahatama Gandhi Road, Fort,
Mumbai - 400 001.

**The Regional Manager,
New India Assurance Co. Ltd.,
Bhubaneswar Regional Office - 550000,
1st Floor, Alok Bharati Towers,
Saheed Nagar, Bhubaneswar-7
...1st Party-Managements.**

And

**Their workman Shri Sriram Ch. Patnaik,
At. Clubpada, Po./Dist. Bolangir, Orissa**

Appearances: M/s. S.K. Sarangi, ... For the 1st Party-
Advocate Management

Shri S.C. Pattnaik. ... For Himself 2nd
Party- Workman

AWARD

An industrial dispute in the following terms:—

"Whether action of the management of Regional Manager, New India Assurance Co. Ltd., Bhubaneswar Region in imposing punishment of "Removal from service" on Sri Ram Chandra Pattnaik, Ex-Sr. Development Officer in relation to their Bolangir Branch w.e.f. 28-6-2004 is proportionate, legal and justified to the offence committed by him? If not, what relief the workman is entitled to?"

has been referred to this Tribunal by the Government of India in the Ministry of Labour in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide their letter No. L-17012/4/2006- IR (M), dated 14-7-2006 :—

2. The disputant workman in his statement of claim has challenged the punishment of removal from service imposed upon him pursuant to a disciplinary proceeding on the ground that the same is illegal, arbitrary, hasty and against the principle of natural justice. According to him the said order was passed mechanically without proper application of mind both by the Disciplinary as well as Appellate Authority. He had never misappropriated

company's money nor put the company in 'heavy loss' whatsoever. The company has taken drastic action against him by removing him from service without any valid reason. The disputant had collected all the premiums and deposited them through account payee bank drafts in the name of the company. The said drafts cannot be en-cashed by the disputant. After receipt, renewal proposals and Bank Drafts/cheques from the Branch Manager of New India Assurance Company Limited, Bolangir Branch are to be verified by the disputant physically and properly. Thereafter the risk is covered and the policy is prepared and after that the account payee demand drafts are deposited in R.A.-16 account of the Company. So the question of misappropriation, fraud and forgery does not arise. A perfunctory enquiry was undertaken and conducted by the enquiry officer Mr. K.K. Mazumdar which resulted in gross miscarriage of justice as the enquiry officer wrongly found all the 15 numbers of charges as fully established. The disputant was not given reasonable opportunity of hearing and was not allowed to effectively cross examine five witnesses examined on behalf of the Bank and the company. The punishment imposed is shockingly disproportionate to the charges framed. Hence it has been prayed that the order of dismissal be quashed and the management be directed to reinstate him in service with all consequential benefits. Further a sum of Rs. 18,36,000 as compensation plus terminal benefits be awarded to him.

3. The management of New India Assurance Company Limited i.e. the 1st Party-Management No. 1 and 2 in their joint written statement have raised the plea of non-maintainability of the claim petition of the disputant and further stated that the disputant is not a "workman" within the definition as given under Section 2(s) of the Industrial Disputes Act, 1947. As such the reference is not tenable in law. The imposition of punishment is just and legal and is based on evidence which points to the guilt of the disputant. No haste has been shown as alleged. There has not been shown any departure from principle of natural justice. Due opportunity was afforded to the disputant and after following all the norms, punishment was awarded. There were fifteen charges against the disputant out of which 14 charges had been proved against him and one remained un-established. The enquiry conducted by the enquiry officer was in a most transparent manner where opportunity was given to the disputant not only to cross examine the witnesses produced by the management, but also for giving evidence in support of his innocence. The enquiry officer has conducted the enquiry without being influenced in any manner from any quarters whatsoever. The disputant has cross examined the witnesses to his full satisfaction. He never recalled any of the witnesses for further cross-examination on any of the issues at any point of time. In the circumstances, the allegation that there has been gross miscarriage of justice is false and denied. The disputant had never questioned the competency of the enquiry officer at any point of time. The findings of the enquiry officer categorically found that the disputant had made personal

gain, caused loss to the company, misappropriated funds of the company to his own use and so held him guilty of the charges as stated above. From the evidence on record it would be seen that the disputant had collected the premium both in cash and through drafts while he misappropriated the cash and in case of drafts he utilized the same for other policies of other clients other than for whom the premium was collected. The disputant did not also account for the money received in certain case. He had issued cover notes but amounts received on account of such cover notes were not accounted to the company's account. The premium received from one party was utilized in another party's insurance. In the circumstances, the averment that all the premiums were received through bank drafts is not only false and misleading but also has been made purposefully. The allegation that the findings in the enquiry report are perverse is wrong and incorrect and denied. The punishment imposed is not disproportionate as has been alleged vis-a-vis the charges, evidence and the findings. The enquiry held is legal and valid. In the event the Tribunal finds any deficiency in the proceeding and comes to the conclusion either there was no enquiry or enquiry held was defective then the management may be allowed to adduce further evidence to substantiate the charges made against the disputant.

4. On the basis of the pleadings of the parties the following issues were framed.

ISSUES

1. Whether the reference is maintainable?
2. Whether the disputant Shri Sriram Chandra Pattnaik, Ex-Sr. Development Officer is a workman within the definition of the term?
3. Whether the domestic enquiry held against the disputant Shri S.C. Pattnaik is fair and proper?
4. Whether the action of management in removing the disputant from service is just and proper?
5. If not, to what relief the disputant is entitled to?
5. On behalf of the 1st Party-Management No.1 sworn affidavit of Shri Kalyan Kishore Mazumdar has been filed on which opportunity to cross examination was afforded to the disputant workman and he cross examined the witness. No other witness was examined on behalf of the 1st Party-Management No. 1 and 2. Documents marked as Ext.-A to Ext.-C have also been relied upon by the 1st Party-Management No. 1 and 2.

6. The disputant workman has refused to adduce any evidence. He has filed certain documents, but those documents have not been proved and exhibited.

FINDINGS

ISSUE NO.1 & 2

7. Since these two issues are based on the same plea hence they are taken together for discussion and decision.

8. The 1st party-Management No. 1 and 2 in their joint written statement have stated that the claim petition is not maintainable as the disputant does not come within the definition of the word "workman" as laid down in Section 2(s) of the Industrial Disputes Act, 1947. To come to clear terms it is necessary to quote Section 2(s) of the aforesaid Act which reads as follows:

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in his functions mainly of a managerial nature.

9. The disputant has relied upon a case "LIC of India Versus-R. Suresh" decided by the Hon'ble Supreme Court reported in 2008 LAB. I.C. 2088 in which case the Division Bench of the Hon'ble-Court has observed that "Development Officer has been held to be a 'workman' - Rules made under L.I.C. Act are not in conflict with jurisdiction of Industrial Court - Industrial Court can, therefore, go into validity or legality of termination order - Jurisdiction of Industrial Court is not ousted by L.I.C. Act either expressly or by necessary implication.

10. But the 1st Party-Management No. 1 and 2 have relied upon the case of "H.R. Adyanthaya ctc. etc. -Versus- Sandoz (India) Ltd., etc. etc. (AIR 1994 SC 2608) which is a five Judges Bench case. In this case the point in issue was whether the 'medical representatives' are workmen as defined under section 2(s) of the Act and the Hon'ble Supreme Court has held that medical representatives are not workmen. In this judgement, the case of "S.K. Verma - Versus- Mahesh Chandra and Another" [1983-II-LI.J-429 SC] also came for discussion wherein the dispute was raised as to whether Development Officers of the Life Insurance Corporation of India (LIC) were workmen. In this case the three Judges Bench of the Hon'ble Supreme Court did not

refer to the earlier decisions in 'May & Baker', 'WIMCO' and 'Burmah Shell' cases and only referred to the decision of the Court in "Workmen of Indian Standards Institution-Versus-Management of India Standards Institution" (1976-I-LLJ-33-SC) and elaborately discussed the nature of duties performed by the Development Officers and accordingly held that the Development Officer could not by any stretch of imagination be said to be engaged in any administrative or managerial work and, therefore, he was a workman within the meaning of Industrial Disputes Act. The Hon'ble Supreme Court in the above referred five Judge Bench case pointed out that this decision did not refer to the earlier three decisions in May & Baker, WIMCO and Burmah Shell case (*supra*) and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in Burmah Shell case (*supra*) by a coordinate bench of three judges. Further no finding is given by the Court whether Development Officer was doing clerical or technical work. He was admittedly not doing manual work. The Hon'ble Court therefore treated this decision as per *in-curiam*. Further the Hon'ble Supreme Court observed that "however, the decisions in the later cases, viz. S.K. Verma, Delton Cable and Ciba Geigy case (*supra*) did not notice the earlier decision in May & Baker, WIMCO and Burmah Shell cases (*supra*) and the very same contention, viz., if a person did not fall within any of the categories of manual, clerical, supervisory or technical, he would qualify to be workman merely because he is not covered by either of the four exceptions to the definition, was canvassed and though negatived in earlier decisions, was accepted. Further, in those case the Development Officer of the L.L.C., the Security Inspector at the gate of the factory and Stenographer-cum-Accountant respectively, were held to be workmen on the fact of those cases. It is the decision of this Court in A. Sundarmabal case (*supra*) which pointed out that the law laid down in May & Baker case was still good and was not in terms disowned.

11. The Hon'ble Court further went to hold we thus have three Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz, manual, clerical, supervisory or technical and two two-judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three judge Bench decisions which have without referring to the decisions in May & Baker, WIMCO and Burmah Shell cases (*supra*) have taken the other view which was expressly negatived viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the I.D. Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today

is that a person to be a workman under the I.A Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation.

12. The above referred five judge Bench case was not referred and discussed in the case cited by the disputant. Therefore the judgement of the five judge Bench case shall prevail over the Division Bench case cited by the disputant and it cannot be held that the Development Officer of an Insurance Company comes under the definition of "workman" as laid down under Section 2(s) of the Industrial Disputes Act, 1947

13. In the case of 'LIC of India - Versus -R. Suresh' (*supra*) the two judge Bench of Hon'ble Supreme Court has observed that the remedy against the termination may lie before an Industrial Tribunal, if the concerned employee is a workman within the meaning of the provisions of the 1947 Act and the five judge Bench decision of the Hon'ble Supreme Court as referred to by the 1st Party-Management No.1 and 2 lays down that a person to be a workman under the LAAct must be employed to do the work of any of the categories viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. And In my view the Development Officer of an Insurance Company does not do the work of any of the categories enumerated above. His case is also covered by the exception (iv) of section 2(s) of the Act. The disputant has not said anything argument regarding maintainability of the reference except citing the decision reported in 2008-LAB-IC-2088 which does not hold good in view of the judgement of the five judge Bench case delivered in "H.R. Adyanthaya etc. etc.- Versus- Sandoz (India) Ltd., etc. etc." reported in AIR 1994 SC 2608.

14. Therefore, I am to hold that the reference is not maintainable in Industrial Court-cum-Labour Court as the disputant does not come within the definition of the word "workman". Issue No. 1 and 2 are accordingly decided against the disputant in the negative.

15. Since the reference is not maintainable hence it will be a futile and unjustified attempt to decided other issues raised in the reference. They are left undecided.

16. In view of the findings recorded in Issue No. 1 and 2 the disputant is not entitled to any relief.

17. The reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2641.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बजाज एलियर्ज लाइफ इंश्योरेन्स कम्पनी लि., वाराणसी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 13/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-7-2012 को प्राप्त हुआ था।

[सं. एल-17012/6/2010-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 23rd July, 2012

S.O. 2641.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No 13/2010) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bajaj Allianz Insurance Co. Ltd. Varanasi and their workman, which was received by the Central Government on 9-7-2012.

[No. L-17012/6/2010-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Present : Dr. MANJU NIGAM, Presiding Officer,

I.D. No. 13/2010

Ref. No. L-17012/6/2010-IR (M) dated 6-7-2010

Between : Shri Rajesh Ranjan
S/o Shri Ravi Shankar Pathak
Village Bhusula, Post Lalganj,
Distt. Ballia (UP)-221005

AND

1. The Chief Executive Officer
M/s. Bajaj Allianz Life Insurance
Company Ltd.,
GD Plaza, Airport Road,
Yarawada, Pune - 411006
2. The Regional Manager
Bajaj Allianz Life Insurance Co. Ltd.,
Arihant Complex, 4th Floor,
Sigra, Varanasi - 221002.
3. The Sr. DM
Bajaj Allianz Life Insurance Co. Ltd.,
Sarju Vilas Complex,
Ockdenganj Choraha,
Ballia - 277001

AWARD

1. By order No. 17012/6/2010-IR (M) dated 6-7-2010 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Rajesh Ranjan S/o Shri Ravi Shankar Pathak, Village Bhusula, Post Lalganj, Distt. Ballia (UP) and the Chief Executive Officer, M/s Bajaj Allianz Life Insurance Company Ltd., GD Plaza, Airport Road, Yarawada, Pune and the Regional Manager, Bajaj Allianz Life Insurance Co. Ltd., Arihant Complex, 4th Floor, Sigra, Varanasi and the Sr. DM, Bajaj Allianz Life Insurance Co. Ltd., Sarju Vilas Complex, Ockdenganj Choraha, Ballia for adjudication.

2. The reference under adjudication is as under:

“Whether Shri Rajesh Ranjan, Junior Sales Manager in Bajaj Allianz Life Insurance Company Ltd. is a workman as defined under I.D. Act, 1947?

If so, whether the action of the management of M/s. Bajaj Allianz Life Insurance Company Ltd., in terminating the services of Shri Rajesh Ranjan w.e.f. 28-7-2009 is justified? What relief the workman concerned is entitled to and from which date?”

3. The case of the workman, Rajesh Ranjan, in brief, is that he was appointed as Junior Sales Manager on 12-6-2006 and subsequently was promoted to Assistant Sales Manager then to Sales Manager and thereafter to Senior Sales Manager; but his services have been terminated by the employers w.e.f. 28-7-2009, illegally without any notice or compensation, in violation of principles of natural justice. It had been submitted by the applicant that his job profile was at par with that of a Development Officer in Life insurance Corporation of India and was not conferred any administrative, financial powers nor was having any authority to appoint anyone; hence, he is covered with the definition of ‘workman’ as defined in Section 2 (s) of the I.D. Act, 1947; and accordingly, has prayed that his termination vide dated 28-7-2009 be declared illegal and he be reinstated with full back wages.

4. Per contra, the management has not turned up to file its written statement, in spite of registered notice dated 29-9-2010, calling the opposite parties to file their written statement with relevant documents and list of reliance on 29-10-2010. When the opposite parties failed to appear on 9-12-2010, 12-1-2011, 14-2-2011, 3-3-2011 and 8-4-2011, the case was ordered to proceed ex-parte against the management and next date 19-5-2011 was fixed for documents and evidence of the workman.

5. The workman filed list of documents 19.05.2011 and its evidence on affidavit; but none turned up from the management to cross-examine the workman; accordingly, next date 1-7-2011 was fixed for argument. When none turned up from the management to argue their case, the file

was reserved for award, after hearing the representative of the workman only, keeping in view reluctance of the management to contest their case.

6. The authorized representative of the workman has argued that the services of the workman has been terminated without affording him an opportunity for self-defence which is violative of the principles of natural justice, in as much as he has not been given any notice or compensation in lieu thereof, which is violative of provisions contained in the Industrial Disputes Act, 1947. Further, it has submitted that the nomenclature of the post held by the applicant is 'Senior Sales Manager' but he was neither conferred any administrative nor financial powers nor was he empowered to make any appointment nor give annual grading to any employee nor was competent to initiate disciplinary action any of the employee; accordingly, he did not perform any managerial or administrative work, though the word 'manager' was there in his postal nomenclature, hence he is covered with the definition of workman given under Section 2 (s) of the Act, and he is a 'workman'.

7. In rebuttal, none has turned up from the opposite parties to contest their case on merit or to argue their case.

8. The workman has filed its evidence on affidavit; wherein apart from reiterating his pleadings already made in the statement of claim, he has stated that his work is similar to the 'Development Officer' in Life Insurance Corporation of India, which includes making of commission based agents and to train them for promotion of the business of the institution. He further stated that his services have been terminated by the management, illegally without affording him any opportunity for self defence, vide letter dated 28-7-2009, dispatched to him vide receipt dated 23-10-2009. He has further stated that he represented before his superior officers for not giving him salary and not allowing him to mark attendance. He has also filed copy of policies deposited by him from 1-8-2009 to 20-8-2009. None turned up from the management to cross-examine the workman or to file any evidence in rebuttal.

9. It is the case of the workman that he had been appointed a Junior Sales Manager with the opposite parties and was promoted to the post of Assistant Sales Manager then to Sales Manager and thereafter to Senior Sales Manager; but his services have been terminated by the opposite parties without affording him any opportunity to defend himself. The workman has also pleaded that irrespective of nomenclature, his job obligations were similar to that of a 'Development Officer' in the Life Insurance of India Corporation. The management has not controverted this submission of the applicant; moreover has not bothered to contest the case at all by filing its written statement or evidence either documentary or oral, in spite of registered notice. The workman has filed list of documents in support of its case as detailed hereunder:

- (i) Photocopy of letter of appointment as Junior Sales Manager and copy of list of duty and obligation to the post.
- (ii) Photocopy of letter of promotion as Sr. Sales Manager.
- (iii) Photocopy of letter of termination dated 28-7-2009.
- (iv) Photocopy of envelop dated 21-10-2009.
- (v) Photocopy of e-mails, exchanged between the workman and the opposite party.
- (vi) Photocopy of representations moved by the workman before higher authorities.
- (vii) Photocopy of policy certificate soled by the workman between 3-8-2009 to 13-8-2009.

10. I have gone through pleadings of the workman and scanned entire evidence on record.

11. The first issue, referred to this Tribunal for adjudication is whether Shri Rajesh Ranjan is a workman as defined under I.D. Act, 1947? In this regard perusal of the definition of the 'workman' is very relevant, which has undergone a sea change from the time of the enactment of the Industrial Disputes Act. Amendment in the definition of workman was made in the year 1947, 1956 and thereafter in the year 1982. From an unskilled manual or clerical work, the definition of 'workman' now includes a skilled, unskilled, manual, supervisory and operation work.

'Workman' was originally defined by Section 2 (s) of the Industrial Disputes Act, 1947 as meaning:

"any person employed (including an apprentice) in any industry to do any skilled manual or clerical work for hire or reward and includes, for the purpose of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute but does not include any person employed in the naval, military or air service of the Crown."

The definition underwent a substantial amendment in 1956 and this is how it stands now:

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957);

- or
- (ii) Who is employed in the police service or as an officer or other employee of a prison; or
 - (iii) Who is employed mainly in a managerial or administrative capacity; or
 - (iv) Who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

The words 'any skilled or unskilled manual, supervisory, technical or clerical work' are not intended to limit or narrow the amplitude of the definition of 'workman'; on the other hand they indicate and emphasize the broad sweep of the definition which is designated to cover all manner of persons employed in an industry, irrespective of whether they are engaged in skilled work or unskilled work, manual work, supervisor work, technical work or clerical work. Quite obviously the broad intention is to take in the entire 'labour force' and exclude the 'managerial force.'

12. In the case of *Ananda Bazar Patrika vs. Workmen*, it was observed by the Supreme Court that mere nomenclature or salary is not the criteria to assess the nature of work of an employee. Whether or not an employee is workman under Section 2 (s) of the Industrial Disputes Act is required to be determined with reference to principal nature of duties. Such question is required to be determined by with facts and circumstances of the case and materials on record. From the appointment letter it is borne out that he was appointed as Junior Sales Manager and was responsible for the development of life insurance business of the company. The applicant has stated in his affidavit that like a 'Development Officer', his work is to make agent to promote the business of the company. He has also stated that he was not performing any administrative or managerial function nor had any financial power nor had any power to appoint any person in the company.

From the evidence on record it appears that the principal duty of the applicant was to organize and develop the business of the company and for that purpose to introduce active agents, to train them to canvass new business. He is expected to assist and inspire the agent. He is expected to stimulate and excite the agents to work, while exercising no administrative control over them. The agents are not his subordinates. In fact he has no subordinates. It is thus, clear that the sales manager can by no stretch of imagination be said to be engaged in any administrative or managerial work.

13. In 1983 (47) FLR S.K. Verma VS. Mahesh Chandra & another; wherein Hon'ble Apex Court, interpreting the

definition given in Section 2 (s) of the I.D. Act, 1947 has observed as under:

"a development officer is to be a whole time employee of the Life Insurance Corporation of India He has no authority whatsoever to bind the Corporation in any way. His principal duty appears to be to organize and develop the business of the Corporation in the area allotted to him and for that purpose to recruit active and reliable agents, to train them to canvass new business and to render post sale service to policy-holders Even so he has not the authority to appoint agents or to take disciplinary action against them. He does not even supervise the work of the agents though he is required to train them and assist them In fact, it is admitted that he has no subordinate staff working under him. It is thus clear that the development officer cannot by any stretch of imagination be said to be engaged in any administrative or managerial work. He is a workman within the meaning of Section 2 (s) of the Industrial Disputes Act."

Thus, in view of above legal position, facts narrated by the applicant and the material on record, the applicant, Rajesh Ranjan, irrespective of his designation as Senior Sales Manager, was in fact a workman as defined in Section 2 (s) of the Industrial Disputes Act, 1947 as he had no power or authority to take any policy making decision or having any administrative control in the company.

14. Now the second issue referred to this Tribunal is regarding validity of termination of the services of the workman, Rajesh Ranjan w.e.f. 28-7-2009 and its effect. In this regard, the initial burden was on the workman to substantiate this fact that he had actually been appointed by the opposite party on the post claimed by him and he worked as such and also, that his services have been terminated in violation of provisions of Industrial Disputes Act, 1947. The workman has well discharged his burden by stating that he had been appointed by the opposite party on the post of Junior Sales Manager on 12-6-2006 and later he was promoted to the post of Senior Sales Manager by the opposite parties. He further stated that his services have been terminated by the opposite party vide order dated 28-7-2009, arbitrarily without affording him an opportunity for self defence on the basis of fake allegations. It was further, stated that his alleged termination letter was dispatched to him vide envelop dated 21-10-2009. The photocopy of appointment letter, termination letter, envelop dated 21-10-2009 and the copies of the representations moved by him to his superiors dated 20-8-2009 to 3-10-2009 have been filed by the workman. He has also filed copy of policy certificates, sold by him during 3-8-2009 to 20-8-2009. Thus, the workman has successfully proved his case through documentary and oral evidence well and the same was not rebutted by the respondents.

Hence, in-view of the specific submissions and documents relied upon by the workman the onus shifts upon the management to enter the witness box and rebut the contentions of the workman.

15. It is a very disgusting state of affair on the part of the management of Bajaj Allianz Life Insurance Co. Ltd. that it did not appear before this Tribunal to substantiate its stand, in spite of registered notice being sent to it. From the perusal of the documentary evidence on record it could easily be drawn that the workman, Rajesh Ranjan was appointed by the opposite parties vide appointment letter dated 24-6-2006, paper No. 10/1 to 10/6; and he had been promoted to the post of Senior Sales Manager in due course on the basis of his business performance vide letter dated 19-3-2008, paper No. 10/7. The services of the workman had been terminated with immediate effect, after giving him one month's notice pay, in lieu of notice period, vide letter dated 28-7-2009, paper No. 10/11-10/12; and the said termination letter was supposed to have been dispatched to the workman on 21-10-2009. The envelop bearing postal receipt dated 21-10-2009 of Varanasi RMS Post Office; paper No. 10/13 is on the record.

Further, from the representations on record, it is evident that the workman kept on representing before his superiors for non-receipt of salary for the month of July and August, 2009 and not allowing him to put his attendance by blocking his Webmail I.D. since 1-8-2009. It is also evident that the workman e-mailed his grievances to Shri Kamlesh Goyal, Head Office Pune on 23-9-2009 and in response he received an e-mail from Mr. Thomas Augustine who wrote as under:

"Deer Rajesh,

Thank you for writing your concern to us. I am looking into this concern and will do the needful. You will hear from me shortly.

Thanks

Thomas Augustine."

There is no reference of termination in the above message. If it be so, there may be a reference that his services have already been terminated vide letter dated 28-7-2009, issued from Head Office, Pune of the opposite party. Besides, the envelop through which the letter of termination dated 28-7-2009 has been dispatched bears a postal receipt of Varanasi RMS Post Office dated 21-10-2009 again shows that the said termination letter was issued on 21-10-2009 and it was antedated or backdated to regularize the time taken by the management. If the services of Mr. Rajesh Ranjan had been terminated on 28-7-2009, what had obstructed the management to inform the workman that his services have been terminated. It a matter of grave concern that the workman was not informed about his termination till 21-10-2009 i.e. after expiry of about three months from the alleged date of termination i.e. 27-8-2009.

The workman continued to work. By the policy certificate, paper No.10/24 to 10/30, it is established that the workman was doing his job and was discharging his duties even after 28-7-2009. There is ample evidence filed by the workman to the effect that he had worked much after 28-7-2009.

16. In (2006) 3 SCC 276 State of UP vs. Sheo Shanker Lal Srivastava & others Hon'ble Apex Court has observed that the statement of the witness, having not been controverted would be deemed to be admitted. In the present case the workman has sustained his case of having been appointed by the opposite parties and worked with them even after 28-7-2009 and also that he had been terminated with an antedated termination letter dated 28-7-2009, which is highly unjustified and violative to the principles of natural justice as well that of provisions contained in the Industrial Disputes Act, 1947. The facts stated in the statement of claim remained un-rebutted. The workman evidence is not controverted. Under the circumstances there is no reason to disbelieve the statement of the workman that his services was not terminated on 28-7-2009 and the workman continued to work even thereafter for opposite parties, selling policies for them, thus, in view of the facts and circumstances discussed, the termination of Rajesh Ranjan cannot be said to be justified.

17. Thus, I am of the opinion that Shri Rajesh Ranjan, Senior Sales Manager in Bajaj Allianz Life Insurance Company Ltd. is a workman as defined under I. D. Act, 1947 and the action of the management of M/s. Bajaj Allianz Life Insurance Company Ltd., in terminating the services of Shri Rajesh Ranjan w.e.f. 28-7-2009 is not justified. The workman is entitled to be reinstated with full back wages with continuity in service within six weeks from the date of notification of this award, failing which the workman shall be entitled for an interest @ 10% per annum on the back wages till the date they are actually paid to the workman.

18. Award as above.

Lucknow, 18-5-2012

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2642.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाइटेड बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 27/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12011/39/2007 आई आर (बी-II)]

शीशा राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2642.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No 27/2007) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. United Bank of India and their workman, which was received by the Central Government on 20-7-2012.

[No. L-12011/39/2007-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 27 of 2007

Present : Justice G. S. SARAF.

Presiding Officer

Parties : Employers in relation to the management of
United Bank of India

AND

Their workman.

Appearance:

On behalf of the Management : Mr. M. P. Mishra, Probationary Manager.

On behalf of the Workman : Mr. Prabir Bhattacharya, Central Executive Committee member of the United Bank of India Employees Union.

State : West Bengal

Industry : Banking

Dated: 27th June, 2012

AWARD

By Order No.L-12011/39/2007-IR(B-II) dated 18-9-2007 the Central Government in exercise of its powers under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute to this Tribunal for adjudication. The schedule is as under:

“Whether the action of the management of United Bank of India, in not paying the special pay of Daftary to Shri Basudev Goswami, the senior-most sub-staff of Howrah branch since September, 2005 is justified? If not, what relief the concerned workman is entitled to?”

2. According to the statement of claim filed by the General Secretary, United Bank of India Employees Union a vacancy on the post of Daftary arose with effect from 5-9-2005 as the Daftary Asish Kumar Singha Roy was assigned the duties of Head Peon on temporary basis and subsequently when Shri Roy was appointed to the post of Head Peon permanently then a permanent vacancy of Daftary arose with effect from 1-1-2006. The workman Basudev Goswami had been working at the Howrah Branch since 23-1-1973 and he was the senior-most among the eligible workmen in the subordinate cadre of the Branch as

on the date when the temporary vacancy occurred on 5-9-2005 and he happened to be senior-most on the date of permanent vacancy, i.e., 1-1-2006 also. One Pradip Chakraborty who was posted at Howrah Branch since 1-1-1994 and who was the junior-most among the eligible workmen in the subordinate cadre on the date of vacancy on the post of Daftary, both on temporary and permanent basis, i.e. 5-9-2005 and 1-1-2006 was assigned the work of Daftary by order dated 5-9-2005 of the Manager, Howrah Branch whereas Basudev Goswami being the senior-most, was entitled to get the assignment of the post of Daftary as per the Bank's circular dated 17-1-1984. Thus the order dated 5-9-2005 of the Manager, Howrah Branch is violative of the aforesaid circular and is also arbitrary, discriminatory, unjustified and unwarranted. Basudev Goswami retired from the Bank's service on 31-10-2006. Basudev Goswami was deprived of the assignment of Daftary attracting special pay of Rs.505. It has therefore been prayed that the workman be declared entitled to the post of Daftary and he be paid special pay of Rs.505 per month from 5-9-2005 to 31-10-2006.

3. According to the written statement filed by the United Bank of India Pradip Chakraborty was transferred to the Bank's Howrah Branch subsequent to the merger of Pretoria Street Branch with Shakespeare Sarani Branch as ordinary sub-staff with protection of his Daftary special pay. As a result, Pradip Chakraborty was enjoying financial benefit in the form of special pay at his new place of posting, i.e. Howrah Branch without actually performing the job of Daftary at the said Branch. Subsequently, when a vacancy of Daftary-was created at Howrah Branch, Pradip Chakraborty was entrusted with the Daftary's job. In terms of Clause 5.8 of the bipartite settlement dated 19-10-1966 a workman will be entitled to special pay, if he is required to perform duty and undertake the responsibility as listed under that category irrespective of his designation. In this case the Bank already paid the special pay of Daftary to one subordinate staff namely, Pradip Chakraborty, and, therefore, the question of payment of special pay to another subordinate staff did not arise. Moreover, the Bank is entitled to entrust special pay duty to any award staff irrespective of seniority in the interest of smooth banking operations. The Bank's action, therefore, is in conformity with its policy. The workman is not entitled to any relief.

4. The union has filed a rejoinder wherein it has reiterated its stand.

5. The workman, Basudev Goswami has filed his affidavit and he has been cross-examined by the representative of the Bank. The Bank has not led any evidence.

6. Heard Shri M. P. Mishra, Probationary Manager on behalf of the Bank and Shri Prabir Bhattacharya, Central Executive Committee member of the union on behalf of the workman.

7. Here it is not for our consideration that whether the job of Daftary should have been assigned to the

workman Basudev Goswami and the limited question which has been referred to the Tribunal is that whether Basudev Goswami is entitled to the special pay of Daftary. Admittedly, the workman, Basudev Goswami has not worked as Daftary even for a day between the period from 5-9-2005 to 31-10-2006 and as such the answer to the question in the schedule is that Basudev Goswami is not entitled to the special pay of Daftary for the aforementioned period.

8. In view of the above discussion, it is clear that the workman Basudev Goswami is not entitled to any relief.

Award is passed accordingly.

Dated, Kolkata, the 27th June, 2012.

JUSTICE G.S. SARRAF, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2643.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/20/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. नं.-L-2012/181/93-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2643.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No CGIT/LC/R/20/94) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 20-7-2012.

[No. L-2012/181/93-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/20/94

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

Shri Lakhandas
S/o Shri Laxman Das,
R/o Gopalpur, P O Gopalpur,
Distt. Sehore (MP) ... Workman

Versus

General Manager,
Bank of India,
Zonal Jail Road,
Bhopal (MP) ... Management

AWARD

Passed on this 13th day of June, 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-12012/181/93-IR(B-II) dated 17-2-94 has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the management of Bank of India, Gopalpur branch in terminating the services of Shri Lakhandas, Ex. Watchman w.e.f. 1-1-1993 is justified? If not, what relief, is the workman entitled to?”

2. The case of the workman, in short, is that he was initially appointed as a daily wager in September 1986 in the Gopalpur branch of the management Bank and worked continuously on the wages of Rs.30 per day till March 1989. He was also required to work as Night watchman. It is again stated that he worked continuously till 31-12-92 and had worked for more than 240 days in a calendar year. He was not given any notice nor paid any retrenchment compensation under the provision of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). It is further stated that juniors to him are still working with the management Bank. His termination is illegal and against the provision of the Act, 1947. It is submitted that the workman be reinstated with back wages and other consequential benefits.

3. The management appeared and filed reply (Written Statement) to contest the reference. The case of the management, interalia, is that Shri Lakhandas was never appointed as daily wager nor as a watchman of Gopalpur branch of the management Bank. He was night watchman in the village. The residents of the Branch Manager and the Branch of the Bank were in the village. As such the Branch Manager paid Rs.30 per month as resident of the village from his own pocket as other villagers did so. There was no relationship of employer and employee between the management of the Bank and Shri Das and there is no violation of any of the provision of the Act, 1947. It is submitted that the alleged workman is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication—

- I. Whether the action of the management Bank in terminating the services of Shri Lakhandas, Ex. Watchman w.e.f. 1-1-1993 is justified?
- II. To what relief the workman is entitled?

Issue No. I.

The workman Shri Lakhan Das has adduced oral evidence and has filed certain documents in support of his case which are paper Nos. 6/2 to 6/13. The management has not adduced any evidence. The management witness did not turn up for cross-examination as such evidence is

not to be looked into. The workman Shri Lakhan Das has supported the case in his evidence that he worked on daily wages as well as night watchman. He has stated that he was orally appointed in the Gopalpur Branch of the Bank. He has stated that he got Rs. 30 per month as his wages. It is suggested that he was watchman in the village. The suggestion is no evidence unless it is established by positive evidence. He has referred the document filed by him in his evidence. The management has not cross-examined on any of the documents filed by him. It appears that the management has also not denied those documents. These documents are not specifically denied or by necessary implication shall be taken to be admitted as also provided in Order 8 Rule 5 of the C.P.C. His evidence shows that there was relationship of employer and employee between the management Bank and the workman and he was workman under the provision of the Act, 1947.

6. Another important question is as to whether his services shall be deemed to be in continuous service for a period of one year preceding the date with reference under the provision of Section 25 B of the Act or not. The workman has filed papers to establish his case. Now let us examine these documents which are not denied by the management. Paper No. 6/2 is the information furnished by the Branch Manager to the Zonal Manager in the year 1988 wherein he had admitted that the workman Shri Lakhan Das was working as a watchman in the Bank. The pleading of the workman is that he was working as Night Watchman from Sept. 1986 to March 1989 on the monthly wages of Rs. 30. This letter shows that he was engaged as a watchman and was not a village watchman as has been pleaded by the management.

7. Paper No. 6/4 is a letter of the Zonal Manager dated 7-6-89 whereby it was asked to inform as to who had sanctioned to pay Rs. 30 per month. This letter further shows that he was in the services of the bank in the year 1989. Paper No. 6/5 further shows that the workman had worked as a watchman in case of need on monthly wages of Rs. 30 from June 1987 to May 1989 for 731 days. He had also worked as casual labour for 150 days. This letter is dated 22-6-91. This letter shows that he had not continuously worked till December 1992 rather he worked 150 days as casual labour. This shows that his services shall not be deemed to be in continuous service for a period of one year during a period of twelve calendar months preceding the date of termination i.e. 1-1-1993 under the provision of Section 25 (B)(2) of the Act, 1947. Paper No. 6/6 is certificate dated 3-1-1989 issued by the Branch Manager. This certificate further shows that he worked on daily wages for 150 days from 1986 to 1988. This letter also does not show that his service is in continuous service for a period of one year under the provision of Section 25 (B)(2) of the Act, 1947.

8. Paper No. 6/7 is the application dated 15-5-89 filed by the workman to the Branch Manager whereby he had

demanded wages of Rs. 540 per month instead of Rs. 30/- per month. This document also does not show that he was in continuous service for one year during the period of twelve months preceding the date of termination under the provision of Section 25 (B)(2) of the Act, 1947. Paper No. 6/8 is the application dated 22-6-91 of the workman to the management for permanent appointment on constable-cum-watchman.

9. Paper no. 6/10 is the recommendation letter dated 9-6-90 of the Branch Manager whereby he had stated in the letter that the workman had worked as casual labour from the year 1986 to 1990. He has given the breakup figure. In the year 1986 he worked 18 days, in 1987-52 days, in 1988-77 days, in 1989-39 days and in 1990-18 days. This clearly shows that he had not worked 240 days during a period of twelve calendar months preceding the date with reference or termination to which calculation is to be made under the provision of Section 25(B)(2) of the Act, 1947. When his service is not said to be in continuous service for a period of one year, the provision of Section 25-F of the Act, 1947 is not attracted and there is no violation of the Act, 1947. There is no definite case as to who are still continuing in service and are juniors to him. No evidence is also adduced in this respect. Thus section 25 G of the Act, 1947 is also not attracted in the case. Thus the documentary evidence of the workman shows that the action of the management is justified. This issue is decided against the workman and in favour of the management.

10. Issue No. II

Considering the discussion made above, it is clear that Shri Lakhan Das came under the definition of workman under the Act, 1947 and there was relationship of employer and employee but he was daily wager employee intermittently and had not worked the sufficient period to attract the continuous service for a period of one year during the period of twelve calendar months preceding the date of termination or reference under the provision of Section 25(B)(2) of the Act, 1947. As such Section 25-F of the Act, 1947 is not violated and the workman is not entitled to any relief. Accordingly the reference is answered.

11. In the result, the award is passed without any order to costs.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2644.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 52/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-7-2012 को प्राप्त हुआ था।

[सं. एल-12011/81/2010-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2644.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52/2011) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 12-7-2012

[No. L-12011/81/2010-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 21st June, 2012

Present : A. N. JANARDANAN, Presiding Officer

Industrial Dispute No. 52/2011

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their workman].

Between:

The General Secretary : 1st Party/Petitioner Union
Indian Bank Employees Union
No. 17, Ameerjan Street,
Choolaimedu,
Chennai-600001

And

The General Manager : 2nd Party Respondent
Indian Bank, Head Office,
Rajaji Salai,
Chennai-600001

Appearances :

For the 1st Party/ Petitioner Union	:	Sri J. Thomas Jeyaprabhakaran, Authorized Representative
For the 2nd Party/ Management	:	M/s T.S. Gopalan & Co. Advocates

AWARD

The Central Government, Ministry of Labour vide its Order No. L-12011/81/2010-IR(B-II) dated 31-5-2011 referred

the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Indian Bank, Chennai in imposing the punishment of Compulsory Retirement from service from Sri R.K. Srinivasulu, an Ex-Clerk/Shroff vide order dated 13-12-2006 is legal and justified? What relief the workman is entitled to?"

2. After the receipt of Industrial Dispute this Tribunal has numbered it as ID 52/2011 and issued notice to both sides. Both sides entered appearance through their Authorized Representatives and filed their Claim, Counter and Rejoinder Statements as the case may be.

3. The Claim Statement averments briefly read as follows:

Sri R.K. Srinivasulu while was working as Clerk/Cashier at Ponnai Branch of Indian Bank, after receiving Rs. 7,503/- on 15-2-2005 towards one Jewel Loan Account of Mr. Babu, noted on the counterfoil the Receipt no. 18 and acknowledged receipt under his signature and the bank's "Cash Received" seal but the amount was not accounted for by him in the Rough Cash Book. Voucher reached directly to the Branch Manager without going through the Scroll Officer, was initialed by the Branch Manager and counterfoil was handed over to the borrower after initialing and making entries in the Jewel Loan Register. He also closed the Jewel Loan Account and released the jewels. On the same day Rs. 27,500 was received by the Cashier to the credit of SB A/c No. 8576 noted as S.No. 19 and entered details in the Rough Cash Book. Though Cash Balance was tallied as per Rough Cash Book and the Cash Scroll, difference of Rs. 7,503 was detected while writing the Day Book. The voucher was found missing. Since the amount was received there should have been such an excess but not reported to the Branch Manager or recorded in the Sundry Deposit Account. He has thus misappropriated the amount. The voucher for Rs. 7,503 available at the time of writing the CIS Sectional Day Book was destroyed by him to escape from this fraud. He was charged on 19-1-2006 for doing act prejudicial to the interests of the bank, willful damage or attempt to cause damage to the bank's property or customers. In the enquiry Ex. MEX1 to Ex. MEX14 were marked on the Management's side and Ex. DEX1 to Ex. DEX13 were marked on the defence side. Prosecution examined MW1 to MW7. After complying with the formalities, on 29-9-2006 punishment of Compulsory Retirement with superannuation benefits as per Clause-6(c) of 10-4-2002 Memorandum of Settlement was proposed to be imposed which was after a personal hearing on 6-11-2006 imposed on 13-12-2006. Appeal was dismissed on 9-2-2008. Thereafter ID raised having failed the reference is caused to be made. Amidst the heavy work pressure he somehow missed to record the receipt in the bank's book.

At the Jewel Loan Section it is expected to credit the party's loan account on receipt of the main challan from the Cash Scroll Officer after verifying that the challan has been duly scrolled and signed by the Cash Officer. In this case the challan had not been scrolled and the S.No. 19 has been scrolled with some other receipt for Rs. 27,500. How the un-scrolled challan was acted upon to release the jewel after closing the party's loan account? The Branch Manager ought to have returned the challan for the said defects and also insisted on the signature of the Scrolling Officer. No worthwhile purpose is being served by simply destroying the main challan, if by the workman, since receipt of Rs. 7,503 is evident. Charge is not based on facts. It is a fact that he did not arrive at any excess at the close of the day but he arrived at a shortage of Rs. 500 which was identified and located in due course. Thus his cash position got adjusted and he too left the branch. The branch staff who were searching for the difference of Rs. 7,503 traced out the difference after the Cashier's leaving the branch. After borrowing from a known person he remitted Rs. 7,503. During enquiry an excess payment of Rs. 7,500 on the same day stumbled. It related to a payment of Rs. 1,20,000. From the denomination details on the back side of the instrument shows the cashier to have had paid Rs. 1,27,500 instead of Rs. 1,20,000. In view of the two coincidences there could only be an excess of Rs. 3 which was made good by the Cashier. Most often small changes of Re. 1 or Rs. 2 are not tendered or received exactly. Against the view of the Disciplinary Authority that the said amount of Rs. 7,500 in DEX 1 should be an interpolation undertaken stealthily later on, is not a possibility for the worker to insert the said entry. It is nothing but a guess. It is natural that any person indulging in any mischief will stay inside the branch keenly watching out the happenings and would be the last person to leave to ascertain that his unethical act has not been found out. The punishment is illegal, unjustified and in victimization and unfair labour practice. He is to be reinstated with back wages and all attendant benefits.

4. Counter Statement averments briefly read as follows:

While adjusting the debit and credit entries the Day Book Clerk found that total of credit entries was in excess of Rs. 7,503. Then the omission of Rs. 7,503 was found in the Rough Cash Book of the Cashier. The workman was found to have received Rs. 7,503 to the credit of the Jewel Loan Account of Babu but was also found to have failed to account the same or to report any excess. He did not report the excess. To the show Cause Notice he replied admitting the excess seeking asylum as having been done due to mental tension. The Compulsory Retirement is justified and valid and is not to be interfered with. The challan found missing must have been obviously due to removal by the workman. Receipt of Rs. 7,503 had not come to the surface for want of entry into the Rough Cash Book and in the Scroll. The workman deliberately appropriated the amount. Punishment is not harsh or excessive. With lenient punishment he is getting pension and has received other

benefits. Punishment is to be upheld.

5. Rejoinder Statement in a nutshell are as follows:

Deficiency in duty on that day occurred not only with the Shroff but also with the Branch Manager and the Scroll Officer. The Cashier is singled out by way of punishment in discrimination.

6. Points for consideration are :

- (i) Whether the punishment of Compulsory Retirement from service of Sri R.K. Srinivasulu, Ex Clerk/Shroff is legal and justified?
- (ii) To what relief the concerned workman is entitled?

7. Evidence consists of testimony of WW1 and Ex.W1 to Ex.W15 marked on consent and Ex. M1 to Ex. M45 on the Respondent's side marked on consent but with no oral evidence on the Respondent's side.

Points (i) and (ii)

8. Heard both sides. Perused the records, documents, evidence and the written arguments on behalf of the petitioner. Both sides argued in terms of their respective contentions in the pleadings. Admittedly excess cash of Rs. 7,503 that occurred on the crucial day viz. 15-2-2005 is sought to be explained away on behalf of the petitioner by showing that there has stumbled an excess payment of Rs. 7,500 on the same day as is evident from the reverse of DEX 1 marked as Ex. M29 which relates to a payment of a sum of Rs. 1,20,000. But from the details of the denomination seen noted on the reverse of the voucher it is seen as follows:

Rs. 500 × 15	=	Rs. 7,500.00
Rs. 500 × 100	=	Rs. 50,000.00
Rs. 100 × 700	=	Rs. 70,000.00
Total	=	Rs. 1,27,500.00

From the above denomination details what is discernible is that as against an actual payment of Rs. 1,20,000 to be made a payment of Rs. 1,27,500 possibly could have been made resulting in an excess payment of Rs. 7,500. With both the amount viz. Rs. 7,503 collected by the Cashier but not accounted for in the Cash Book and the alleged excess payment of Rs. 7,500 made on the same day the net excess works out to Rs. 3 only which was made good by the Cashier. The case of the Disciplinary Authority that the said amount of Rs. 7,500 in Ex. M29 should be an interpolation undertaken stealthily later on, whether is true or probable has to be anxiously gone into in order to resolve the dispute in a just and true manner. When according to the petitioner such a possibility of inserting the said entry by the worker is not a possibility, it is argued on behalf of the Management that such an entry could have been deliberately caused to be made by the employee, on the further supportive contention that in the midst of four vouchers on the very date paying out money, one for

Rs. 3,000 next for Rs. 4,300 and last for Rs. 100 other than the voucher in question viz. Ex. M29 there are no details of denominations of the currency notes on the other 3 vouchers. So a contention is canvassed on behalf of the Respondent that the denominations on Ex. M29 could only have been made deliberately by the petitioner in order to neutralize the impact of not entering the sum of Rs. 7,503 in the Rough Cash Book. Going by Ex. M29 with meticulous scrutiny it appears that the actual situation cannot be found to be exactly as argued on behalf of the Respondent. The reason for giving details of denominations of Rs. 1,20,000 on the reverse of the voucher could possibly have been also due to the fact that the said payment voucher as distinguished from the other three ones, alone involved a huge sum of Rs. 1,20,000 requiring noting of the denomination details as a matter of abundant caution whereas the other vouchers are for meagre amounts as mentioned above. Really speaking that the Cashier might have stealthily inserted the entries on the reverse of the voucher is a finding on no evidence. In other words the said finding is merely on a guess, surmise or conjecture. Regarding the then excess of a minor sum of Rs. 3 it is no more to be an axe to grind to be further debated. The same sum is only easily adjustable and which is so established. The further argument on behalf of the workman is that if he had been guilty of having not entered the amount of Rs. 7,503 in the Rough Cash Book with a view to misappropriate the same he would not have left the branch early. As argued by the representative of the workman he would have been the last person to leave the branch waiting to ascertain that his unethical act has not been found out. All these arguments on behalf of the petitioner, according to me go in favour of the workman that he is not to be invariably guilty of the charges levelled against him. True, to remember devil alone knew what the intent of a man is. Regarding the missing of the main challan which was allegedly there till the leaving of the Cashier but was detected to be missing after his leaving again, cannot be a valid circumstance to pinpoint the workman as having removed the same or having destroyed it. Here also the argument on behalf of the Cashier advanced by the representative does not seem to be illogical irrational. Though not entered in the Rough Cash Book, but when receipt of money is proved by means of the challan both, original and the counterfoil, etc. even with the destruction of the same voucher the fraudster cannot escape culpability. Therefore there is no reason why the Cashier should himself destroy the voucher. Fastening liability on the Cashier for the missing of the voucher as being taken away by him and destroyed it, is also not on any evidence or any logically probative material leading to such a conclusion that he alone could have done it. It also is again on mere surmise and conjecture. Suspicion is not a substitute for proof. Here there is no legal evidence to conclude that the Cashier had any guilty intention to do any misconduct. Innocent mistakes or omissions without any guilty intention to commit the same cannot attract sanction of law. One may at best say that the Cashier alone "may have done it". But one cannot say that the Cashier alone "must have done it". It is well to remember that there is a long mental distance between the statement "he may have done it" and "he must

have done it". Perhaps the Cashier may have been guilty but without any legal evidence or any material logically probative to a prudent mind to fasten liability on him he cannot be found guilty of the misconduct. It is not an instance of insistence on proof beyond doubt required to fasten liability on him but it is a case where some legal evidence, say not adequate evidence, is lacking which is necessary to establish guilt on him. What is wanting is that "some evidence to fasten liability on him". The Cashier is not shown to be a workman with any bad record of past service. Therefore it is a hard case to find that the Cashier is guilty of the charges. The finding is therefore perverse. The same is set aside. The punishment is also set aside. This is a conclusion to be drawn to uphold the magnanimity of law too.

9. Resultantly the workman is ordered to be reinstated into service forthwith, with continuity of service and all other attendant benefits but without back wages.

10. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 21st June, 2012).

A. N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WWI. Sri R. K. Srinivasulu
For the 2nd Party/Respondent : None

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
Ex. W1	19-1-2006	Charge Sheet Ref. CO:VLR:VIG:F.287/428/2005
Ex. W2	15-3-2005	Preliminary Investigation Report of Mr. Selvam, AM, Circle Office, Vellore alongwith with enclosures.
Ex. W3	15-3-2005	Letter by SD. Babu, Jewel Loan Account Customer
Ex. W4	01-1-2005	Office Order for the period from 1-1-2005 to 31-3-2005
Ex.W5	Nil	Summing up of the defence.
Ex.W6	13-7-2006	Letter Ref:CO:VLR:VIG:F.287/184/2006 of the Disciplinary Authority enclosing the findings dated 12-7-2006 of the Enquiry Officer
Ex. W7	26-7-2006	Comments of the Charge Sheeted Employee on the Enquiry Officer's findings
Ex.W8	29-9-2006	Second Show Cause Ref:CO:VLR:VIG:F.287/272/2006
Ex.W9	6-11-2006	Reply submitted by the Charge Sheeted Employee to the Second Show Cause
Ex. W10	13-12-2006	Order Ref:CO:VLR:VIG:F.287/358/2006 imposing the punishment of Compulsory Retirement
Ex. W11	9-1-2007	Appeal submitted by the Charge Sheeted Employee to the Appellate Authority

Ex. W12	6-2-2008	Proceedings of the personal hearing held before the General Manager/Appellate Authority	Ex. M17	16-2-2005	Copy of the Sundry Deposit cash credit voucher cash remitted by Mr. R. K. Srinivasalu
Ex. W13	6-2-2008	Representation submitted by the Charge Sheeted Employee to the General Manager/Appellate Authority during the personal hearing.	Ex. M18	15-3-2005	Copy of the Investigation Report of S. Selvam, AM Circle Office, Vellore with 6 Annexures
Ex. W14	11-2-2008	Letter Ref: HRM:DPC:130:2008 by the Chief Manager, HRM enclosing the order dated 13-12-2006 of the General Manager/ Appellate Authority	Ex. M19	3-3-2005	i. Letter from Dheenasarasan to Vigilance Officer
Ex. W15	22-4-2008	Petition under I.D. Act, Section-2A submitted to the Assistant Commissioner of Labour (Central), Chennai	Ex. M20	3-3-2005	ii. Letter from Venkateswaran to Vigilance Officer
On the Management's side			Ex. M21	4-3-2005	iii. Letter from Srinivasalu to Chief Manager, Circle Office
Ex.No.	Date	Description	Ex. M22	—	Connected Letter
Ex. M1	16-2-2005	Report of the Branch Manager to Asstt. Manager, Circle Office at Vellore	Ex. M23	—	Interrogation with Sivakumar
Ex. M2	3-3-2005	Further report from Branch Manager to Asstt. General Manager, Ponnai	Ex. M24	16-2-2005	vi. Letter from Indian Bank to Asstt. Manager, Circle Office, Vellore on 16-2-2005
Ex. M3	4-3-2005	Memo calling for the explanation by Chief Manager, Circle Office at Vellore	Ex. M25	15-3-2005	Copy of the letter of Sri D. Babu addressed to Branch Manager, Ponnai regarding his Jewel Loan matters
Ex. M4	24-3-2005	Petitioner's explanation	Ex. M26	1-1-2005	Copy of the Office Order, Ponnai Branch
Ex. M5	27-10-2005	Show Cause Notice issued by the Respondent	Ex. M27	28-11-2005	Copy of Sri R. K. Srinivasulu, CSE in reply to the show cause notice dated 27-10-2005 of DA Vellore
Ex. M6	28-11-2005	Reply given by the petitioner	Ex. M28	24-3-2005	Copy of the letter given by Mr. R. K. Srinivasulu
Ex. M7	26-7-2006	Reply given to the Charge Sheet	Ex. M29	15-2-2005	SB 10358 Voucher for Village Education Committee
Ex. M8	16-2-2006 2-3-2006 7-3-2006	Enquiry Proceedings	Ex. M30	15-2-2005	SB 3008 of P.U. Elementary School
Ex. M9	16-2-2005	Copy of letter of Ponnai Branch addressed to Circle Office	Ex. M31	—	SB 10260 of Mr. V. Solairaj-Staff
Ex. M10	15-2-2005	Copy of the Rough Cash Book of Ponnai Branch maintained by Cashier	Ex. M32	15-2-2005	SB 10538 of Mr. Siva Kumar (Staff)
Ex. M11	15-2-2005	Cash Scroll Register in Ponnai Branch	Ex. M33	15-2-2005	SB 2043 of Mr. M. Kannan
Ex. M12	15-2-2005	Copy of Credit Voucher of Ponnai Branch Marked as No. 19 by the cashier for the credit of SB 8576 for Rs. 27,500	Ex. M34	15-2-2005	SB 2043 of Mr. M. Kannan
Ex. M13	15-2-2005	Copy of Loan Voucher Counterfoil of Ponnai Branch for Rs . 7,503 for the Jewel Loan Account of 2099/4/1/37	Ex. M35	15-2-2005	SB Credit Challan No. 3008 of Mr. N.M. Shanmugham
Ex. M14	—	Copy of the Jewel Loan Ledger folio no. 58 favouring D. Babu	Ex. M36	27-5-2005	Copy of loan Challan JL 260/05 for Rs. 15,000
Ex. M15	15-2-2005	Copy of the CIS Loan Sectional Day Book of Ponnai Branch	Ex. M37	24-2-2006	Copy of loan challan JL for Rs. 1,600 A/c Chakrapani
Ex. M16	15-2-2005	Copy of the Day Book of Ponnai Branch	Ex. M38	25-2-2006	Copy of SB Debit Voucher Alc 8884 Venkatesan
			Ex. M39	—	Copy of SB Ledger Sheet of Ramamurthy No. 6998.
			Ex. M40	12-11-2005	Rough Cash Book Page-289
			Ex. M41	12-11-2005	Cash Scroll Register
			Ex. M42	12-5-2006	Presenting Officer's summing up
			Ex. M43	12-6-2006	Defence Summing up
			Ex. M44	14-11-2006	Proceeding of personal hearing
			Ex. M45	11-2-2008	Letter enclosing order dated 9-2-2008 passed by Appellate Authority

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2645.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संलग्न सीजीआईटी/एलसी/अपर/54/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12011/14/2004-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2645.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.CGIT/LC/R/54/04) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workmen, which was received by the Central Government on 20-7-2012.

[No. L-12011/14/2004-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Nb. CGIT/LC/R/54/04

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

The General Secretary,
Allahabad Bank Employees Union,
Head cashier, Allahabad Bank,
Kharapur,
Sagar (MP) ... Workman

Versus

The Asstt. General Manager,
Allahabad Bank,
Regional Office, Civil Lines,
Jabalpur ... Management

AWARD

Passed on this 22nd day of June 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-12011/14/2004-IR(B-II) dated 3-6-2004 has referred the following dispute for adjudication by this tribunal :-

“Whether the action of the management of Allahabad Bank to impose the punishment of reduction in stage by order dated 6-1-2001 on Shri R.P.Pandey, Head

Cashier and to treat the suspension period as not spent on duty is legal and justified ? If not, what relief is the workman concerned entitled to?”

2. The Union appeared and filed a copy of petition wherein it is stated that the dispute was raised before the Assistant Labour Commissioner (Central), Jabalpur which resulted in failure. Thereafter the Union had withdrawn itself from the dispute and this fact was timely informed to the ALC(C) Jabalpur. It is stated that despite the fact of withdrawal of the dispute by the Union, the dispute is referred to the Tribunal for adjudication. It is stated that the Union had withdrawn himself from the dispute under intimation to authorities much earlier i.e. on 25-3-04 from the date of reference i.e. 3-6-2004 . The Union has not filed any statement of claim as such the Union is not inclined to raise dispute before the Tribunal.

3. The workman Shri R. P .Pandey also appeared in the case after authorization by the Union and filed an application with affidavit stating therein that he has filed Writ Petition before the Hon'ble High Court at Jabalpur with respect to the same dispute and therefore he doesnot want to raise dispute in the Tribunal. He has further stated that the Union had withdrawn to raise this dispute and therefore the dispute became individual. It is clear that the Union or the workmen doesnot want to raise the dispute before the Tribunal and therefore there is no dispute pending before the Tribunal.

4. The management has also appeared in the case and filed an application. It is stated that the Union has not filed any statement of claim and has not raised any dispute before the Tribunal. The individual workman appeared and filed an application to withdraw the reference. It is clear that the dispute is not being raised before the Tribunal by the Union. This is a reference to adjudicate the action of the management to impose the punishment of reduction in stage.

This is not a case of termination or dismissal. Section 36 of the Industrial Dispute Act, 1947 provides that the dispute of the workman shall be raised by the executive member or office bearer of the Trade Union. In the instant case, the Union has already withdrawn from the dispute. As such it appears that the individual workman is not entitled to raise the dispute before the Tribunal as it is not a case of termination or dismissal or discharge from the services. Since the Union is not raising the dispute, this is a case of no dispute before the Tribunal. Accordingly the reference is answered.

5. In the result, no dispute award is passed on the basis of above discussion without any order to costs.

MOHD.SHAKIR HASAN, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2646.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/132/02) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/95/2002-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2646.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.CGIT/LC/R/132/02) of the Central Government Industrial Tribunal/ Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 20-7-2012.

[No. L-12012/95/2002-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/132/02

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

Shri Deepak Khatwase,
Chhoti Nadhi, Pandhara Road,
Behind New Sabji Mandi,
Khandwa (MP)

... Workman

Versus

The Regional Manager,
Central Bank of India,
Regional Office,
Above City Post Office,
Mangalwara,
Hoshangabad

... Management

AWARD

Passed on this 20th day of June, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/95/2002-IR (B-II) dated 9-9-2002 has referred the following dispute for adjudication by this tribunal :-

“Whether the action of the management of Regional Manager, Central Bank of India, Hoshangabad in terminating the services of Shri Deepak Khatwase w.e.f.

31-8-2001 is justified ? If not, what relief the workman is entitled for ?”

2. The case of the workman, in short is that the workman Shri Deepak Khatwase was initially engaged on 3-7-1993 as a peon against vacant post in Khandwa Branch of the Central Bank of India and was paid wages under the Minimum Wages Act. He worked continuously till 30-8-2001 when he was terminated without assigning any reason. He was not given any showcause notice nor paid any retrenchment compensation as provided under Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). It is stated that he worked more than 240 days every year. It is stated that he was paid wages in different names and adopted unfair labour practice though he put his signature on the register himself. It is stated that the management Bank had also violated the provision of Section 25(G) and 25(H) of the Act, 1947. It is submitted that the workman be reinstated with full back wages.

3. The management appeared and filed Written Statement to contest the reference. The case of the management, inter alia, is that the workman was engaged for few hours at Khandwa branch as casual worker. He was paid the amount as agreed by him under the contract. His case is attracted under Section 2(oo)(bb) of the Act, 1947 and not comes under the definition of retrenchment. He was never engaged on the post of peon by the management Bank. He was not paid wages as fixed under the Minimum Wages Act. It is denied that he worked 240 days in every calendar year. The provision of Section 25-F of the Act, 1947 is not attracted. It is submitted that the workman is not entitled to any relief.

4. On the basis of the pleading of both the parties, the following issues are for adjudication-

I. Whether the action of the management in terminating the services of Shri Deepak Khatwase w.e.f. 31-8-2001 is justified ?

II. To what relief the workman is entitled ?

5. Issue no. I

The workman Shri Deepak Khatwase is examined himself in the case. He has supported his case. He has stated that he did not get any appointment letter. He has further stated that the documents filed in the case are with respect to the part time engagement. He has further stated that the wages were paid to him as daily wages. His evidence clearly shows that he was part time daily wager. His evidence doesnot show that he was engaged on contract rather he was part time daily wager. He claims himself that he worked 240 days in every calendar year but has not stated specific number of days he worked every year.

6. The workman has also adduced documentary evidence. The management witness has admitted those

documents and are accordingly marked as Exhibit W/1 to W/5. Exhibit W/1 is the bonus payment sheets. This is filed to show that the workman had received bonus of the year 1998-1999 and 1999-2000. The bonus sheet of 1998-99 shows that the workman got Rs. 326 of the said period. The another bonus sheet of 1999-2000 shows that he got bonus of Rs. 869 of 113 days of work done. This itself shows that the workman had not worked 240 days in the period of 1999-2000. Thereafter he had not worked as such no bonus was paid. This further shows that he shall not be deemed to be in continuous service for a period of one year during a period of twelve calendar months preceding the date of termination under the provision of Section 25(B)(2) of the Act, 1947. This shows that there is no violation of Section 25-F of the Act, 1947.

7. Exhibit W/12 is the reply of the management filed by the management before the ALC(C), Bhopal. The workman has relied this document and has filed in the case which is admitted by the management witness. This document clearly shows that the workman worked in the year 1993-93 days, in 1994-82 days, in 1995 - 216 days, in 1996-55 days, in 1999-60 days, in 2000-52 days and in 2001-68 days only. This shows that the workman had not worked 240 days in twelve calendar months preceding the date of termination to calculate continuous service for a period of one year and therefore the provision of Section 25(B)(2) of the Act is not attracted and there is no violation of Section 25-F of the Act, 1947. Exhibit W/3 is the circular of the management Bank for regularization of Safaikarmchari (part time). There is no reference to consider that the workman was entitled for regularization. It is a settled principle that the Court cannot go beyond the reference.

8. Exhibit W/4 is the letter dated 20-2-1988 of the Branch manager to Regional officer furnishing information regarding the days of work done by the workman and other as casual wages employee. This letter is filed by the workman and is admitted by the management witness in his evidence. The information furnished to the Regional Office shows that the workman worked as temporary peon as casual labour full time from 1993 to 1995 during the period of days discussed above. These information further shows that the workman had not worked 240 days in any of the year to attract the provision of the Act, 1947. Exhibit W/5 is another letter dated 1-3-2000 of the Branch Manager to the Regional office furnishing the information of work done by the workman from 1993 to 1999 as temporary full time but the information shows that he had not worked more than 240 days in any of the year till 1999. Thus the documentary evidence clearly shows that he shall not be deemed to be in continuous service for a period of one year during the period of twelve calendar months preceding the date with reference to which calculation is to be made. As his service was not counted in continuous service for one year under the employer, he shall not be considered as retrenched employee under the provision of Section 25-F of the Act, 1947.

9. On the other hand, the management has examined one witness namely Shri Hemant Kumar Sharma who is Senior Manager in the said branch of the management Bank. He has supported the case of the management. He has stated that the workman had not worked continuously till 1993 to 2001. He has admitted the documents filed by the workman which are already discussed above. He has denied that the payment was made to the workman in fake names. There is nothing in his evidence to prove the case of the workman rather it shows that the workman had not worked continuously and had not worked 240 days in any calendar year

10. It is not out of place to say that the workman has admitted in cross-examination in his evidence that paper No. 8/37 is his selection for part time safai karmchari wherefrom he was called to work but he did not go to work as part time employee. This shows that the employment was offered to him but he had refused himself. However on the discussion made above, it is evident that the workman had not worked 240 days or more during a period of twelve calendar months preceding the date with reference as such there is no violation of the provision of Section 25-F of the Act, 1947. The workman has not made out any case for violation of provision of Section 25-G and 25-H of the Act, 1947. This issue is decided against the workman and in favour of the management.

11. Issue No. II

Considering the entire evidence on record, I find that the action of the management is justified and the workman is not entitled to any relief. Accordingly the reference is answered.

12. In the result, the award is passed without any order to costs.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2647.—आौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/आर 03/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/176/2003-आई आर (बी-II)]

शीशा राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2647.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No.CGIT/NGP/03/2004) of the Central Government Industrial Tribunal/ Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workmen, which was received by the Central Government on 23-7-2012.

[No. L-12012/176/2003-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/03/2004

Date: 11-7-2012.

Party No. 1

The Branch Manager,
Bank of Maharashtra,
Lahanuji Nagar, Opp: Atul Mangal
Karyalaya, Rukhminagar, Amravati

Versus

Party No. 2

Shri Subhash Wamanrao Dhole
C/o Smt. Suman Shiv Kumar Khadse,
Pansakar Layout, Qtr. No.22, Tope Nagar,
Amravati

AWARD

(Dated: 11th July, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial -Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of Maharashtra and their workman, Shri Subhash Dhole, for adjudication, as per letter No.L-12012/176/2003-IR(B-II) dated 15-12-2003, with the following schedule:-

"Whether the action of the management of Bank of Maharashtra through Regional Manager, Amravati in terminating the services of the workman Shri Subhash Wamanrao Dhole, Ex.Sepoy-cum-sweeper w.e.f. 26-3-2003 is legal & justified ? If not, to what relief the said workman is entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, shri Subhash Dhole, ("the workman" in short), filed the statement of claim and the management of Bank of Maharashtra, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that initially he was appointed as a Sepoy-cum-sweeper on daily wages orally on 25-10-2000 with party no. 1 and worked at Rukmininagar branch continuously till 26-3-2003 and completed more than 240

days of work in each calendar year and wages of Rs. 4,180.30, Rs. 3,235.00, Rs. 9,485.00, Rs. 16,537.90 and Rs. 4537.50 were paid to him for the periods from 16-10-2000 to 31-12-2000, 1-1-2001 to 30-4-2001, 1-5-2001 to December 2001, January 2002 to December 2002 and January 2003 to 26-3-2003 and bonus of Rs. 876.31 was paid to him on 31-10-2002 and he used to do the work of Sepoy for the whole day, after performing the duty of sweeper in the morning and at times, he was also doing duty for extra hours as per the direction of the employer, for which no extra remuneration was paid to him and with a view to deprive him from his legitimate claims of regularisation and permanency, he was shown as a daily wager and his whole service record was unblemished and satisfactory, but party no. 1 illegally and unlawfully terminated his services orally w.e.f. 26-3-2003, for patently on false reason by way of victimization and the termination of his services is not in good faith, but in colourable exercise of rights and power of the employer and while terminating his services, no notice as required under law was served on him and no notice pay in lieu of notice or retrenchment compensation was paid to him and there was flagrant violation of the provision of Section 25-F of the Act and after his termination, one Shri Manna Ramesh Chaker was engaged by party no. 1 in his place, in violation of the provisions of Section 25-H of the Act and the work, which he was performing was / is in existence and work of sweeper is a daily need of party no. 1 and as such, termination of his services is mala fide amounting to unfair labour practice and the termination is ab-initio void and on 22-4-2003, he approached the party no.1 with request application for his reinstatement, but his application was not considered and as the termination of his services is illegal, he is entitled for reinstatement in service with continuity and back wages.

3. The party no.1 in its written statement has pleaded inter-alia that the workman was orally engaged by them purely on daily wages as and when required on part-time basis as a sweeper and he was not in their employment from 25-10-2000 continuously without any break or interruption till 25-3-2003 and the engagement of the workman as a part time sweeper was in the vacancy occurred due to transfer of regular appointed employee and the workman voluntarily left the engagement, for better prospects and since the workman voluntarily left the engagement, he cannot allege about wrongful termination of his services and the question of oral termination and giving of notice or notice pay in lieu of notice or retrenchment compensation does not arise and the workman as per their record, worked for only 425 days between 25-10-2000 to 25-3-2003 and received the payment for the same and the workman did not complete 240 days of continuous work in any calendar year and the entire claim of the workman is misconceived in law and facts and he is not intitled for any relief.

4. Besides placing reliance on the documentary evidence, the workman has examined himself as a witness in support of his case. His evidence is on affidavit. In his

examination-in-chief, the workman has reiterated the facts mentioned in the statement of claim. However, in the cross-examination, the workman has admitted that he has not filed any document to show that he started working as a Sepoy-cum-sweeper from 25-10-2000 and he has also not filed any document to show that his name was sponsored by the Employment Exchange.

5. One Deepak Hiramjee Bagde has been examined as a witness on behalf of the party no.1. The witness has also reiterated the facts mentioned in the written statement in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has denied the suggestion that the workman had completed 240 days of work in a calendar year.

6. On perusal of the material on record including the evidence adduced by the parties, it is found that the engagement of the workman was purely on temporary basis on daily wages and the engagement of the workman was made orally and the same was not a regular appointment or an appointment in accordance with the Rules of appointment of party no. 1.

7. The workman has claimed that though he had completed 240 days of work in every calendar year, the party no. 1 terminated his services without compliance of the provision of Section 25-F of the Act. The party no. 1 has denied such claim. In view of the stands taken by the parties, I think it proper to mention the settled principles in this regard as enunciated by the Hon'ble Apex Court in different judgments.

8. The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that:-

"Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25-B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary, if the total service is 240 days in a period of twelve calendar months either before the several changes or after these.' The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a

vagueness which existed in the unamended section 25-B".

9. In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics L.td.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

10. The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) have held that:

"Industrial Disputes Act (14 of 1947)- S.25-F, to Retrenchment compensation-Termination of services without payment of Dispute referred to Tribunal-Case of workman/claimant that he had worked for 240 days in a year preceding his termination- Claim denied by management-Onus lies upon claimant to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary, the affidavit of the workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

11. The Hon'ble Apex Court in the decision reported in (2005) 5 SCC-100 (Reserve Bank of India Vs. S. Mani) have held that:-

"Industrial Disputes Act, 1947-Ss.25-F, 25-N,25-B and II-240 days' continuous Service-Onus and burden of proof with respect to Evidence sufficient to discharge-Failure of Employer to prove a defence (of abandonment of service) if sufficient or amounted to an admission, discharging the said burden of proof on the workman discharged, merely because employer fails to prove a defence or an alternative plea of abandonment of service - Filing of affidavit of workman to the effect that he had worked for 240 days continuously or that the workman had repeated representations or raised demands for reinstatement, is not sufficient evidence that can discharge the said burden-Other substantive evidence needs to be adduced to prove 240 days' continuous service-Instances of such evidence given.

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The

Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service.

Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court of Tribunal to come to the conclusion that a workman had in fact, worked for 240 days in a year. Such evidence might include proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period or the terms and conditions of his offer of appointment, or by examination of any other witness in support of his case.

So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of Section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

12. The present case in hand is now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had in fact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 26-3-2003. So, it is necessary to prove that in the preceding twelve calendar months of 26-3-2003, the workman had worked for 240 days.

Besides his own oral evidence on affidavit, the workman has relied on the documents, payment voucher (Ext. W-1), statement of accounts, (Ext. W-2) and copy of notice issued by him (Ext. W-3). The party no. 1 has not disputed the genuineness of the said documents. The witness for the management in his cross-examination has admitted that the statement furnished by the Bank for the period from 1-1-2000 to 23-11-2007 of the pass book of SB. No. 20620 are true. On perusal of the statements of the pass book of SB. No. 20620, it is found that the workman worked for more than 240 days, preceding the 12 calendar months of the date of the termination i.e. 26-3-2003. There is no legal evidence on record that the workman voluntarily left the services. It is also admitted that neither one month's notice or one month's pay in lieu of notice or retrenchment compensation was paid to the workman as required under Section 25-F of the Act. Hence the retrenchment of the workman from services is illegal.

13. The question now for consideration is to whether the workman is entitled for reinstatement in service. In this regard, I think it proper to mention about the principles enunciated by the Hon'ble Apex Court in the case, between "The in-charge officer and another versus Shankar Shetty, reported in 2011(1) MPLJ/11:2010(8)SCALE-583". In the said decision, Hon'ble Apex Court have held that,

"Industrial Disputes Act 1947/ Section 25F / Daily wager / Termination of service in violation of Section 25(F) / Award of monetary compensation in lieu of reinstatement/ Respondent was initially engaged as daily wager by appellants in 1978/His engagement continued for about 7 years intermittently up to 6-9-85/Respondent raised industrial dispute relating to his retrenchment alleging violation of procedure prescribed in Section 25(F) of the Act/Labour court rejected respondents claim: holding that Section 25(F) of the Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination 6-9-85. On appeal, High Court directed reinstatement of Respondent into service holding that termination of respondent was illegal-Whether an order of reinstatement will automatically follow in a case where engagement of a daily wager has been brought to an end in violation of Section 25(F) of the Act-Allowing the appeal-held:

The High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently up to September 6, 1985 i.e. about 25 years back. In a case such as the present one it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion the compensation of rupees one lakh (Rs. 1,00,000) in lieu of reinstatement shall be appropriate, just and equitable".

14. The principles enunciated by the Hon'ble Apex Court as mentioned above are squarely applicable to the present case at hand. The workman was initially engaged as daily wager by party no. 1 on. 25-10-2000. His engagement continued for about 3 years intermittently upto 25-3-2003 and his services were terminated on 26-3-2003. Applying the principles as enunciated by the Hon'ble Apex Court as mentioned above, it appears to me that the relief of reinstatement is not justified in this case and instead monetary compensation would meet the ends of justice. In my considered opinion compensation of Rs. 50,000 (Rupees fifty thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence it is ordered.

ORDER

The action of the management of Bank of Maharashtra through Regional Manager, Amravati in terminating the services of the workman, Shri Subhash Wamanrao Dhole, Ex. Sepoy-cum-sweeper w.e.f. 26-3-2003 is illegal & unjustified. The workman is entitled for monetary compensation of Rs. 50,000 in lieu of reinstatement. He is not entitled for any other relief.

The party no.1 is directed to pay the compensation of Rs. 50,000 to the workman within one month from the date of Publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2648.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, असुविध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/ 117/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-2012 को प्राप्त हुआ था।

[सं. एल-12011/224/2002-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2648.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/ NGP/117/2003) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 23-7-2012.

[No. L-12011/224/2002-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT /NGP/117/2003 Date: 9-7-2012.

Party No. 1

The Dy. General Manager,
Canara Bank, North Circle Office,
112-Sion Koliwada Road,
Mumbai-400022.

Versus

Party No. 2

The General Secretary,
Bank Employees Federation Eastern
Maharashtra, C/o Union Bank Staff
Union, Gandhibagh, Nagpur.

AWARD

(Dated: 9th July, 2012)

1. In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Canara Bank and their workman, Shri M.N. Bangale, for adjudication, as per letter No. L-12011/224/2002-IR (B-II) dated 17-3-2003, with the following schedule:—

"Whether the Management of Canara Bank through the Assistant General Manager, Staff Selection (Workman) Mumbai North Circle Office, Mumbai is

justified in proposing recovery of Rs. 33,452 from the salary of the workman Shri M.N. Bangale, Clerk employed at Sadar Bazar, Nagpur Branch, Nagpur? If not, what relief the said workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Bank Employees Federation Eastern Maharashtra", ("the union" in short), filed the statement of claim on behalf of the workman Shri M. N. Bangale, ("the workman" in short) and the management of Canara Bank, ("Party No. 1" in short) filed its written statement.

The case of the workman as presented by the union in the statement of claim is that Vidarbha Irrigation Development Corporation ("VIDC" in short), Nagpur on 16-8-2000 kept a sum of Rs. 4,44,00,000 in fixed deposit for 15 days with Canara Bank, Sadar Bazar Branch, Nagpur and the workman dealt with the transaction and prepared the fixed deposit receipt ("FDR" in short) bearing No. 3316/A mentioning the date of issue as 16-8-2000, period of deposit as 15 days and date of maturity as 30-8-2000, erroneously, instead of 31-8-2000 and the FDR was checked and signed for its correctness by Smt. Mala Parthasarathy, Special Assistant (Supervisor) and Shri W.D. Fule, Manager and both the said officer did not point out the above human error and the same went unnoticed and the said fixed deposit was paid to VIDC alongwith interest of Rs. 1,00,356 vide five demand drafts in favour of the Bank of Maharashtra, on 30-8-2000 and interest slip were prepared by Smt. Jyoti Borkar, clerk and checked and signed for their correctness by Shri S. J. Khapre, officer and Shri Ingewale, the Manager and the said three responsible officer also failed to point out the human error occurred earlier and made the payment and all the five demand drafts were presented by the Bank of Maharashtra in the Bankers clearing house on 31-8-2000 and the Canara Bank's Account with the Reserve Bank of India ("RBI" in short) was debited by Rs. 4,45,00,356 on 31-8-2000 and as per the guidelines of the RBI, a deposit should be for a minimum period of 15 days to earn any interest and the Canara Bank's book and records reveal that the payment of Rs. 4,45,00,365 was debited on 31-8-2000 in favour of VIDC, through the Bank of Maharashtra and thus Canara Bank posted with the amount on 31-8-2000 and therefore, Canara Bank held the fixed deposit for full 15 days in its account and as such, the fixed deposit qualified for interest legally and there was no payment of excess interest and the Canara Bank did not suffer any monetary loss in the said transaction and when legitimate interest was paid to the client, the question of any recovery from the concerned employees becomes illegal and cannot be given effect to. It is further pleaded by the union that the Canara Bank's case is that the fixed deposit was only for 14 days and therefore no interest at all should have been paid to the client and the entire transaction became illegal due to violation of the RBI's directives, but in the first place, the Bank should have asked VIDC to refund the excess amount to the Bank and

the records of the Bank do not show that at any point of time, the Bank had taken up the issue with the VIDC and this itself goes to prove beyond doubt that there was no excess payment of interest to VIDC and therefore, the recovery is illegal and Smt. Mala Parthsarthy and Shri W. D. Fule opted for voluntary retirement scheme and the alleged excess amount of interest was recovered from their retiral benefits, but subsequently, Shri W.D. Fule raised objection with the Bank for unauthorized recovery and demanded refund of the same and the so called recovery was under duress and the Bank in its half hazard way, failed to indentify the persons, if any, responsible for the hypothetical loss and the Branch Manager's letter to Dy. General Manager, Canara Bank, MPID Section, Circle Office, Mumbai North dated 6-2-2001 reveals that the mistake had been occurred, during the course of business inadvertently and the Bank had collected Rs. 165 Crores on account of VIDC and the same was with the Bank as deposits and the service rendered to VIDC was in the interest of the Bank and the concerned employees had already regretted for the inadvertent mistake and assured to be more careful in future in Bank's transaction and as such, the action of the Bank for recovery of the interest paid to VIDC from the workman is not justified.

3. The party no. 1 in their written statement have pleaded inter-alia that VIDC was issued with FDR for Rs. 4,44,00,000 for 15 days on 16-8-2000 by Sadar Bazar branch, Nagpur and the date of maturity in the FDR was mentioned as 30-8-2000 instead of 31-8-2000 and due to the said discrepancy, the amount deposited was kept only for 14 days instead of 15 days and the amount so deposited was paid on 30-8-2000 by issuing DDs in favour of VIDC and in terms of RBI guidelines in Vogue during the relevant period, a deposit should be for a minimum of 15 days for earning any interest and as the fixed deposit of VIDC was retained with the Bank, only for 14 days, the same was not eligible for payment of any interest as per the RBI's guidelines and inspite of such short coming in the fixed deposit, interest for 15 days to the tune of Rs. 1,00,356 was paid to VIDC on 30-8-2000 and due to the same, Bank sustained a loss of Rs. 1,00,356 and on probing into the matter, it was observed that there was contributory negligence on the part of the workman, Shri W.D. Fule and Smt. Mala Parthasarthy and in terms of the provisions of Canara Bank Service Code and service agreement between the Bank and the employees, an employee is liable to make good any loss or damage sustained by the Bank in consequence of any negligence on his part in the performance of his duties and the workman vide his letter dated 17-4-2002, admitted to have committed mistake in respect of putting the dates in the FDR and after examining the matter, administrative decision was taken by them to call upon the workman Shri Fule and Smt. Mala their moiety of loss caused to the Bank and proportionate amounts were recovered from Shri Fule and Smt. Mala, who took retirement under the VRS, but the workman raised the industrial dispute instead of reimbursing the proportionate amount of loss caused to the Bank, without any basis. The

further case by party no. 1 is that the workman had admitted the lapse on his part, while preparing the FDR and the payment was made as per the terms of receipt and as such, it cannot be said that the clerk and the other officials, who handled the payment of the deposited amount did not point out the error in the receipt and the payment of the proceeds of the fixed deposit on 31-8-2000 cannot be treated that the amount was with the bank for 15 days, for the reason that once the proceeds of the FDR were paid by the five DDs on 30-8-2000, it was to be deemed that payment was made on 30-8-2000, irrespective of the date of the encashment of the DDs by the depositor in question and as such, the submission that the fixed deposit in question was held for 15 days by the Bank cannot be accepted and having committed a mistake, the workman cannot claim the VIDC should have refunded the interest amount and such claim of the workman is incorrect and unreasonable, as because, once the defect in any FDR is not rectified before its maturity, the payment of the same cannot be legally stopped, as the contract was concluded and the relief as claimed by the workman cannot be granted, as the lapse on the part of the workman is obvious and he has admitted the lapse on his part while preparing the fixed deposit in question.

4. In support of their claim, the union has examined the workman as a witness. The workman in his examination-in-chief, which is on affidavit, has stated that vide letter dated 14-3-2001 the party no.1 attributed the lapse of payment of excess interest of Rs. 1,00,356 to VIDC to him and that he was required to reimburse the Bank the proportionate amount of Rs. 33,452, being one third of the total amount payable and the order of reimbursement of proportionate amount of Rs. 33,452 was passed against him without affording him reasonable opportunity to defend himself and as such, he raised the industrial dispute before the Regional Labour Commissioner. In his cross-examination, the workman has admitted that on 16-8-2000 he was working as a clerk in Canara Bank, Sadar Bazar, Nagpur and he prepared FDR no. 3316/A for the fixed deposit made by VIDC for an amount of Rs. 4,44,00,000 and the fixed deposit was made for 15 days and as the fixed deposit was made on 16-8-2000 for 15 days, the date of maturity of the same should have been 31-8-2000, but he mentioned the date of maturity in the said FDR as 30-8-2000 and bank was not paying any interest, on premature withdrawal of FDR of 15 days to the depositor and from the date of the issue of the demand drafts by the Bank, it is presumed that payment has already been made and necessary entries are made in the registers and ledgers of the Bank in that regard on the date of the issuance of the demand drafts. The workman has further admitted that on 30-8-2000, interest of Rs. 1,00,356 was paid to VIDC and VIDC was not entitled to receive any interest as the period of fixed deposit was for 14 days and Bank has already recovered a sum of Rs. 33,452 each from Shri Fule and Smt. Mala. The workman has further admitted that Bank had considered the representation made by him and thereafter passed orders for recovery of Rs. 33,452 from

him and the contents of para 4 of his affidavit that order of reimbursement of proportionate amount of Rs. 33,452 has been passed against him without affording a reasonable opportunity to defend himself is not correct.

5. No oral evidence was adduced by party no. 1.

6. At the time of argument, it was submitted by the learned advocate for the workman that though the five demand drafts were given on 30-8-2000 to VIDC, it is clear from the materials on record that the actual payment was effected through clearing and book adjustment in the account of the Bank with the RBI on 31-8-2000 and in effect, from 16-8-2000 to 31-8-2000, the Canara Bank enjoyed the amount for full 15 days and parted with the same on 16th day and therefore the order for recovery of the proportionate amount of Rs. 33,452 from the workman is illegal and the order is required to be quashed and set aside.

7. Per contra, it was submitted by the learned advocate for the party no. 1 that the workman while preparing the FDR for Rs. 4.44 crores in favour of VIDC on 16-8-2000, mentioned the date of maturity as 30-8-2000 instead of 31-8-2000 and since the fixed deposit was kept for 14 days, the VIDC was not entitled for any interest on the FDR as 30-8-2000 but a sum of Rs. 1,00,356 was paid to VIDC on 30-8-2000 and thereby, the bank incurred a loss of Rs. 1,00,356 and an amount of Rs. 33,456 each had been recovered from Shri Fule, the then Manager and Smt. Mala, who had signed the FDR as per circular no. 15/2000 dated 8-2-2000 (M-II) and the Bank is entitled to recover the loss from the concerned employees, if not reimbursed by the customer and the Bank had written a letter on 13-2-2001 to VIDC for return of Rs. 1,00,356, but VIDC by letter dated 15-1-2001, (M-III) refused to refund the said amount and the workman has admitted the lapse committed by him in preparing the FDR and that due to mentioning the date of the maturity as 30-8-2000 by him, instead of 31-8-2000, bank sustained loss of Rs. 1,00,356 and that the Bank after considering the representation, passed the order for recovery of the proportionate amount of Rs. 33,452 and as such, the workman is not entitled to any relief.

8. Perused the record including the evidence adduced by the parties. After going through the materials on record including the evidence of the workman, it is found that there is no force in the contention raised by the learned advocate for the workman that though the five demand drafts were issued on 30-8-2000, the amount was actually debited on 31-8-2000, so it can be held that the amount of Rs. 4.44 crores was with the Bank for 15 days, as because in his examination-in-chief, the workman has not whispered a single word about the same. On the other hand, in his cross-examination, the workman has categorically admitted that in fact on 30-8-2000, interest of Rs. 1,00,356 was paid to VIDC, though VIDC was not entitled to receive any interest, as the period of fixed deposit was for 14 days and after considering his representation, Bank passed the order of recovery of Rs. 33,452 from him.

The workman in the statement of claim and so also in his evidence has admitted that he mentioned the date of maturity on the FDR as 30-8-2000 instead on 31-8-2000. So, it is clear that the workman was responsible alongwith Shri Fule and Smt. Mala for the loss of Rs. 1,00,356 sustained by the Bank and the workman is liable to reimburse the proportionate loss amounting to Rs. 33,452 and the order passed by the party no. 1 for recovering of the said amount is in accordance with the provisions of the Bank. Hence, it is ordered:

ORDER

The Management of Canara Bank through the Assistant General Manager, Staff Selection (Workman) Mumbai North Circle Office, Mumbai is justified in proposing recovery of Rs. 33,452 from the salary of the workman Shri M.N. Bangale, Clerk employed at Sadar Bazar, Nagpur Branch, Nagpur. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2649.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/ 09/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/8/2008 आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2649.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.CGIT/ NGP/09/2008) of the Central Government Industrial Tribunal/ Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 20-7-2012.

[No. L-12012/8/2008-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No.CGIT/NGP/09/2008

Date : 1-6-2012

Party No. 1

The Assistant General Manager,
Central Bank of India,
Zonal Office, Marg, Victoria Building,
Kamptee Road, Nagpur.

Versus**Party No. 2**

Shri Govinda Vithoba Patansawangikar
R/o In front of Dayanand Park,
Maharshi Dayanand Nagar, Plot no. 1601,
Nagpur-440017

AWARD

(Dated : 1st June, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Central Bank of India and their workman, Shri Govinda Patansawangikar, for adjudication, as per letter No. L-12012/8/2008-IR (B-II) dated 19-3-2008, with the following schedule:—

"Whether the action of the management in relation to Central Bank of India, Zonal Office, Nagpur in dismissing the services vide order dated 30-9-2006 of Shri Govinda Vithoba Patansawangikar, Ex. CTO, Ukni Branch of the Bank (without giving any notice and post termination dues) on the ground of serious misconduct is legal and justified ? If not, what relief the workman is entitled ?

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Govinda Vithoba Patansawangikar, ("the workman" in short) filed the statement of claim and the management of Central Bank of India ("party no. 1" in short) filed the written statement.

The case of the workman is that party no. 1 is a Nationalized Bank and the service conditions of the employees of the Bank are governed by Sastry Award and Desai Award and Bi-partite Settlements signed at National level between the Management and unions and he joined the services of the party no. 1 in the sub-ordinate cadre w.e.f. 24-10-1983 and even though, his academic qualification was up to 8th standard, because of the sincere services rendered by him, he came to be promoted to clerical cadre w.e.f. July 2000 and he was transferred to CTO at Ukni Branch in July, 2005 and while he was working at Ukni Branch, he was suspended vide order dated 3-11-2005, on the allegations of committing misconduct, while working as a clerk at Mahada branch and on 28-11-2005, a charge sheet containing as many as three charges under clause 19.5(j) of the Bi-partite Settlement was served on him and consequently, a departmental enquiry was ordered by the Disciplinary Authority and Shri A.B. Shastri was appointed as the enquiry officer, who conducted the enquiry and submitted his findings to the Disciplinary Authority on 27-5-2006, holding all the three charges to have been proved against him and on the basis

of such findings, the Disciplinary Authority vide order dated 30-9-2006, awarded the punishment of dismissal from service without any notice for the first two charges and stoppage of two increments for one year for the third charge and in view of such order, he was dismissed from service w.e.f. 30-9-2006 and he preferred an appeal against the order of punishment before the Appellate Authority on 11-11-2006, but his appeal was dismissed by order dated 11-6-2007 by the Appellate Authority.

It is further pleaded by the workman that as his educational qualification is 7th standard, he was having no knowledge of English language and the charge sheet as well as all the proceedings of the enquiry were in English and the enquiry was also conducted in English language and party no. 1 committed error in not conducting the disciplinary proceedings in Hindi or Marathi language, and due to the same, he could not follow the meanings of the words used in the enquiry and its implications and on that ground alone, the entire departmental enquiry was vitiated and the enquiry came to be conducted without appointment of defence representative for one reason or the other and it was necessary on the part of the enquiry officer to give full and adequate opportunity to him to bring the defence representative, but the same was not done and the procedure adopted by the enquiry officer in conducting the departmental enquiry was not fair and correct and no list of documents and documents were given to him well in advance and the enquiry officer made undue haste in conducting the proceedings and recorded the statements of the witnesses of the management on the same day of giving documents and by such act, proper opportunity was not given to him to study the documents before recording of oral evidence and sufficient time was also not given to him to adduce evidence in his defence, after closure of the evidence from the side of the management and the enquiry came to be completed rather hastily and the account holders whose reference was made in the charge sheet were not examined in the enquiry and even written complaint of the said account holders were not produced in the enquiry.

The further case of the workman is that the findings of the enquiry officer are not based on the evidence on record and the reasons assigned by him to hold the charges to have been proved are not justified and the enquiry officer made a farce of conducting the enquiry and received the findings in a most mechanical manner and as such, the enquiry is not fair and the findings of the enquiry officer are perverse and before awarding the punishment, his past records were not considered and the punishment awarded is shockingly disproportionate. The workman has prayed to set aside the order of punishment dated 30-9-2006 and to reinstate him in service with full back wages and consequential benefits.

3. The party no. 1 in its written statement has pleaded inter-alia that the workman initially joined the services of

the Bank on 24-10-1983 as a sub-staff and as per the policy of the Bank and taking into consideration the various factors and particularly the seniority and length of service of the workman, he was promoted to clerk cadre in July, 2000 and he was transferred to Ukni Branch in July, 2005 and while the workman was working at Ukni Branch, he was suspended vide order dated 3-11-2005 for specific charges of misconduct levelled against him, pertaining to his tenure at Mohda Branch and he was charge sheeted on 28-11-2005 for specific charges of misconduct and the charges of misconduct against the workman were quite serious including the allegations of misappropriation of cash amount and subsequently, the Disciplinary Authority ordered the departmental enquiry and one Shri A.B. Shastri was appointed as the enquiry officer and the workman participated throughout and the enquiry was fair and all reasonable opportunities were given to the workman in the enquiry to defend himself and prove his innocence and principles of natural justice were followed in letter and spirit during the enquiry and the enquiry officer finally submitted his findings to the Disciplinary Authority on 27-5-2006, holding the charges levelled against the workman to have been duly proved in the enquiry and on the basis of the enquiry report, the Disciplinary Authority eventually dismissed the workman from the service of the Bank without notice, by way of punishment, by order dated 30-9-2006 and, the allegation as made in the statement of claim that the workman was not having any knowledge in English language is not true and the sub-staff cadre, who came to be promoted to clerical cadre like the workman have working knowledge of Banking business in English language and the workman is not an exception to the same and such plea is nothing but an attempt by the workman to cover up his own wrong and the enquiry officer did not commit any error in not conducting the disciplinary enquiry proceedings in Hindi or Marathi language and the workman participated in the enquiry without raising any grievance whatsoever that he was not able to understand the proceedings in English language and the proceedings should be recorded in Hindi or Marathi and it is therefore not open to him, at this stage, to raise such objection and the workman was allowed sufficient time to engage a defence representative of his own choice and the enquiry officer adjourned the enquiry twice for the same, but for the reasons best known to the workman, he failed to appoint a representative of his choice and therefore, it is not open for the workman to turn around and allege at this stage that he could not understand the proceedings written in English and the same is nothing but a lame excuse to put forth by the workman to gain sympathy and that too, by way of an afterthought, to cover up his own wrong and no grievance was raised by the workman during the enquiry as regard the decision of the enquiry officer to record the statement of the witnesses for the management and the workman has failed to make out a case that any prejudice was caused to him and after recording of the evidence of

the witness of the management, sufficient opportunity was given to the workman to adduce evidence in rebuttal and the enquiry was not conducted and completed in a haste and the workman had admitted the genuineness of all the documents produced on record by the management and the findings of the enquiry officer are very much in tune with the record of the enquiry, oral and documentary evidence and all other relevant factors and the findings are proper and well reasoned and based on evidence on record and the same are not perverse and the punishment imposed is not shockingly disproportionate and the workman committed fraud and was guilty of misappropriation and the Bank management lost confidence on the workman and he came to be dismissed after taking into consideration all the aggravating and extenuating circumstances of the case and he is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after holding a departmental enquiry, the validity of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 15-12-2011, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that two charges were leveled against the workman on a single ground and as such, the charge sheet submitted against the workman was illegal. It was further submitted that the findings of the enquiry officer are perverse and the reasons given by the enquiry officer are not based on the evidence on record and a mere formality of enquiry was done and no complaint was lodged against the workman and the complainant was also not examined in the enquiry and the previous record of the workman was not considered before imposition of the punishment and the punishment imposed against the workman is shockingly disproportionate to the charges leveled against the workman. The learned advocate for the workman made an alternative argument that the punishment of dismissal from services be converted to one of compulsory retirement, so that the workman will get some retirement benefit in his old age.

6. Per contra, it was submitted by the learned advocate for the party no.1 that 3 charges were leveled against the workman and the charges have been proved against the workman in a properly conducted departmental enquiry and the workman did not adduce any rebuttal evidence in the enquiry in support of his defence and the findings of the enquiry officer are based on evidence adduced in the enquiry and charge of misappropriation of money has been proved against the workman, which is very serious in nature and the workman deposited the amount to cover his misconduct and Bank has lost confidence in the workman and the punishment is not shockingly disproportionate, so as to call for interference and the punishment cannot be converted to one of

compulsory retirement as the same will amount to showing of misplaced sympathy, which is not permissible.

7. Before taking into consideration the merit of the submissions made by the learned advocate for the workman, I think it proper to mention about the settled principles regarding the jurisdiction of the Tribunal to interfere with the findings and punishment in disciplinary matters and the standard of proof required in a disciplinary proceeding.

It is well settled that in a disciplinary proceeding, the standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt like in a criminal trial and where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the Tribunal to review the materials and if the enquiry has been properly held, the question of adequacy or reliability of evidence cannot be canvassed before the Tribunal.

It is also well settled that the jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction and the Tribunal cannot interfere with the findings of the enquiry officer or competent authority, where they are not arbitrary or utterly perverse and the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of legislature or rules made under the provision of Article 309 of the Constitution and if there has been an enquiry consistent with the Rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of competent authority and if the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

8. Now, the present case in hand is to be considered with the touch stone of the settled principles as mentioned above.

On perusal of the record of the departmental enquiry, it is found that management examined two witnesses namely, Shri S.V. Patki, Head Cashier, Mohada Branch and Shri C.V. Rao, the Asst. Manager, Mohada Branch, and produced documents M.Ex-1 to 15 in the departmental enquiry. The workman admitted the genuineness of the documents produced by the management and did not cross-examine the witnesses examined on behalf of the management. The workman did not adduce any evidence in his defence. It is found that the enquiry officer has dealt with the charges chronologically and has assessed the evidence on record of the departmental enquiry in a rational manner in arriving at the findings. He has also assigned cogent reasons in support of the findings. Hence, the findings of the enquiry officer cannot be said to be

perverse. Hence, there is no force in the contention raised by the learned advocate for the workman in that regard.

9. On perusal of the charge sheet, it is found that three charges had been levelled against the workman for committing various misconducts by the workman. There is no illegality in leveling different charges when the act committed by an employee comes under different head of charges. Hence, I find no force in the contention raised by the learned advocate for the workman that the charge sheet was illegal as two charges were levelled against the workman for a single ground.

10. So far the contention raised regarding non-consideration of the past service record of the workman before imposing the punishment is concerned it is well settled that in case of proved misappropriation there is no question of considering the past record. It is the discretion of the employer to consider the same in appropriate cases and the Labour Court or Tribunal cannot substitute the penalty imposed by the employer on that ground.

11. So far the proportionality of the punishment is concerned it is found that serious misconducts including misappropriation of money have been proved against the workman in a properly conducted departmental enquiry.

The workman as a Bank officer held a position of trust, where honesty and integrity are in built requirement of functioning of the Bank. So it would not be proper to deal with the matter leniently. The workman committed the misconduct for his personal ends and against the interest of the Bank and the depositors. Hence, the punishment of dismissal from services imposed against the workman cannot be said to be disproportionate to the proved grave misconducts or shockingly disproportionate.

So far the alternative submission made by the learned advocate for the workman to convert the punishment of dismissal to one of compulsory retirement is concerned it is to be mentioned here that the scope of judicial review in such a case is very limited. Sympathy or generosity as a factor is impermissible. Loss of confidence is the primary factor. In the instant case, the workman was found guilty of misappropriating the Bank's funds. There was nothing wrong in the Bank losing confidence or faith in such an employee and awarding punishment of dismissal. In such a case, there is no place for generosity or misplaced sympathy and to interfere with the quantum of punishment imposed by the Disciplinary Authority. Hence, it is ordered:—

ORDER

The action of the management in relation to Central Bank of India, Zonal Office, Nagpur in dismissing the services vide order dated 30-9-2006 of Shri Govinda Vithoba Patansawangikar, Ex. CTO, Utkni Branch of the Bank on the ground of serious misconduct is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

S.O. 2650.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉर्पोरेशन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 58/1990) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/211/90-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S. O. 2650.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/1990) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Corporation Bank and their workman, which was received by the Central Government on 20-7-2012.

[No. L-12012/211/90-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

Dated : 15th June 2012

Present : Shri S. N. NAVALGUND, Presiding Officer

C.R.No. 58/1990

I PARTY

Shri B. Umesh Rao,
C/o. Shri Shambu Namboodiri,
Advocate, Sullia-574239
D. K. District

II PARTY

The Chairman,
Corporation Bank, Head Office,
Mangalore- 575 001

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section(1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947(14 of 1947) has referred this dispute vide order No.L-12012/211/90-IR-B(II) dated 16-10-1990 for adjudication on the following Schedule:

SCHEDULE

"Whether the action of the management of Corporation Bank in terminating the services of Shri B. Umesh Rao, Janata Deposit Collector w.e.f. 28-4-1988 is justified? If not to what relief the said workman is entitled to?"

2. My Learned Predecessor after securing the presence of both the parties and receiving their pleadings and the evidence, after hearing the arguments by his award dated 29-11-2002 had disposed off the reference in the following terms. "The reference is allowed. The management is directed to regularize the services of the first party keeping in mind the direction of the Hon'ble Supreme Court of India in the decision reported in 2001 AIR SCW 749." When this award was challenged by the second party before the Hon'ble High Court of Karnataka in Writ Petition No.4285/05(L-TER), the Hon'ble High Court by order dated 6-12-2007 quashed the said award and remanded the reference for fresh disposal in accordance with law after providing opportunity to both the parties further ordering the second party to reinstate the first party in terms of the law laid down by the Supreme Court in 2001 AIR SCW 749 within four weeks from the date of order and it would be subject to the result in the Reference before the tribunal. After the above order in the writ petition the reference was taken in its original number and after securing the presence of the parties and advocates once again the arguments addressed by the learned advocates of both sides were heard.

2. Previously my Learned Predecessor while passing the award dated 29-11-2002 without referring to the evidence led by both. the sides while observing that a Pigmy agent in view of the decision of the Hon'ble Supreme Court reported in 2001 AIR SCW being a workman, no enquiry was being held before terminating his services as per the mandatory provisions of Industrial Dispute Act by issuing a charge sheet and that the evidence of MW1 and the documents relied by the management is not sufficient to say that the enquiry is properly conducted against the workman before he was terminated had allowed the reference directing to regularize his services keeping in mind the direction of the Hon'ble Supreme Court of India in the decision reported in 2001 AIR SCW 749. Whereas the Hon'ble High Court of Karnataka in Writ Petition No.4285/2005 (L-TER) by its order dated 06-12-2007 while observing that as per the law laid down by the Supreme Court in the workman of M/s. Firestone Tyre & Rubber Co. of India P. Ltd., Vs. the Management & Others reported in AIR 1973 Supreme Court 1227 "the mere fact that no enquiry or defective enquiry has been held by the employer does not by itself render the dismissal of the workman illegal. The right of employer to adduce evidence justifying his action for the first time in such a case is not taken away by the proviso to Section 11A", further observing that tribunal

under the impugned award in one sentence concludes that the evidence of MW1 is not sufficient to prove that the first party workman has misappropriated the amount of customers passed the impugned award which approach is contrary to law and as such the impugned award is liable to be quashed passed the order and thereby it is now incumbent on the part of this court to refer to the evidence brought on record by the parties and to give a finding whether the management i.e. the second party establish any money of the customers being misappropriated by the first party.

3. On appreciation of the pleadings, oral and documentary evidence brought on record by both the sides I have come to the conclusion the second party having miserably failed to establish any misappropriation of the customers money by the first party and allow the reference confirming the reinstatement of the first party made pursuant to the order of the Hon'ble High Court of Karnataka in the Writ Petition for the following reasons:

REASONS

4. It is asserted in the counter statement filed for the second party that the Janata Deposit Collector is expected to render proper account of the Janata Deposit amounts collected by him and to deposit the collection made by him on anyone day to the branch at the commencement of the business hours on the next working day with a statement of account and the corresponding counterfoils signed by the depositors and in that context the first party was issued with letter by the Manager of the branch. Though the details of the lapses on the part of the first party is not mentioned in the counter statement we may refer to the letter said to have been issued by the branch manager to the first party which is at Ex.M3 and reads as under:

Sub: Conduct, Behaviour, records—explanation therefore.

"You are requested to offer our explanation for the following within 7(seven)days from receipt of his letter."

- (1) You have been reporting late on several occasions,
- (2) Your non-submission of leave note for not reporting to post Janatha Deposit Collection Register on 10th October 1987,
- (3) Issuing JD receipt to parties before submitting to this office for verification. Receipt No. 793180 for week ending 11th October, 1987 of Shree Veereshwara T.R. JDA/c.No.183/87 and Receipt No. 794266 for week ending 4th October, 1987 of Shree S. Sulaiman Account No. 191/87,
- (4) The Janatha Deposit Account holder Shri S.A. Hameed S/o Shri Abdulla, Mametha Frame

Works, Sullia, U.K holding JD Account No.288/86 and 283/87 canvassed by you says that he intended to open for one year and in trust gave the application duly signed for doing the needful. Both the application shows for two years.

- (5) Your advising Shree S.A. Hameed, that he will be loosing one percent interest by opening for one year that also meddling in between when we were discussing and your utterance that you will meet him outside and to more out.
- (6) Please furnish the gist of your meet with him outside the premises.
- (7) Shri P. Dinesh Shenoy holding Janatha Deposit Account No. 122/86 says he is totally unaware of the term of deposit which stands canvassed by you. You have been consulting with him inside the premises and why you have not directed him to supervisory staff.
- (8) Why we should not conclude that the telegram in the name of Shri P Dinesh Shenoy is effected by your self.
- (9) The Janatha Deposit Collection Register is not regular in respect of cards you have held that is the account number of cards you have held/holding are not correctly shown in the Jt. Collection Register.

Please insure timely reply, else will be viewed seriously. Please acknowledge the receipt of this letter with date."

5. But to substantiate these imputations made against the first party in the letter of the branch manager neither the branch manager examined before this court nor any documentary evidence relating to them are produced to believe the said imputations. MW1 the only witness on behalf of the management claims to have worked as Officer, Sullia branch from 1987 June to 1990 April deposed "that he know the first party who was the Janata Deposit Collector. His duties were to collect the amount from the Depositors and deposit the amount on the next day and that he was not working properly and that he was not crediting the amount collected by him that he was not writing the registers and that there were many complaints from the customers as such on 22.10.1987 bank issued notice to him as per Ex.M3. The Regional Manager enquired the matter and that Ex.M4 is the complaint given by the 9 customers. Ex.M5 is the Report of the Regional Manger and Ex.M6 & M7 are the letters of the bank to the head office regarding the complaint and letter of Chief Manager, Disciplinary Cell regarding the attitude of the first party". It is very clear from the manner in which he/MW1 has given evidence that he is the formal witness to get exhibited Ex.M1 to M8 and he has no personal knowledge. The letter

of termination served on the first party dated 28-04-1988 under the signature of Manager of Sullia branch just states that "in terms of the instructions received from our head office vide reference number quoted above, your services stands terminated with immediate effect from 28-4-1988. You are requested to surrender the identity card issued by this office and Janatha Deposit Cards held with you" without specifying what is the instructions received from head office: The letter under reference in the letter is HRD: PAW-1 :MNG:OR:322/88 dated 25-4-1988 which is also not produced. In other words the second party failed to bring on record the primary evidence relating to imputations made against the first party in the letter of the branch manager issued to him dated 22-10-1987 the copy of which is at Ex. M3. In the absence of placing on record the primary evidence to substantiate the imputations and testify the relevant officer of the bank, on a formal evidence of MW1 who has already adverted to by me above, just got exhibited Ex. M1 to M8 which are in the form of correspondence. Under the circumstances I have arrived at the conclusion the bank having miserably failed to establish any misconduct on the part of the first party or misappropriating the customers money. Under the circumstance I have no other option except to hold the action of the second party in terminating the services of Shri B.Umesh Rao, Janatha Deposit Collector w.e.f 28-4-1988 being unjustified. As fairly conceded by the learned advocate appearing for the first party since he was a Pigmy Collector in the event of his termination is held not justified, order of reinstatement made by the Hon'ble High Court has to be confirmed with continuity of service and no other reliefs could be granted to him. In the result I pass the following award:

AWARD

The reference is allowed holding that the action of the management of Corporation Bank in terminating the services of Shri B. Umesh, Janatha Deposit Collector w.e.f 28-4-1988 is not justified and that he is entitle for reinstatement with continuity of service. His reinstatement pursuant to the order of the Hon'ble High Court in the Writ Petition No. 4285/2005(L-TER) dated 6th December 2007 shall have to be confirmed.

(Dictated to PA transcribed by her corrected and signed by me on 15-06-2012)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2651.—ओडिशा विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीसीएल के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओडिशा विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण

नं 1, धनबाद के पंचाट (संदर्भ संख्या 56/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/94/2008-आई आर (सीएम-1)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2651.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 56/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. C.C. Ltd., P.O. Bokaro thermal and their workman, received by the Central Government on 23-7-2012.

[No. L-20012/94/2008-IR (CM-1)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference U/s. 10(1)(d) (2A) of the
Industrial Disputes Act, 1947

Reference No. 56 of 2008

Parties : Employers in relation to the management of
Karo Special Project of M/s. C.C. Ltd.

AND

Their Workmen

Present : Shri H.M. Singh, Presiding Officer

Appearances :

For the Employers : Shri D.K. Verma, Advocate

For the Workman : Shri R. Ranjan, Advocate

State : Jharkhand : Industry : Coal

Dated, the 29th June, 2012

AWARD

By Order No. L-20012/94/2008-IR (CM-1) dated 4-11-2008 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

- "(i) Whether the action of the management of Karo Special Project of M/s. C.C. Ltd. in denying regularisation to Smt. Jitni Devi, Ayah (Trainee) as Ayah is justified and legal?
- (ii) To what relief is the concerned workman entitled and from what date?"

2. The case of the concerned workman is that she was appointed as Ayah by letter dated 18/23-3-1991 against permanent vacancy and against permanent nature of job. As per appointment letter the concerned workman was to remain on probation for a period of six months. She completed probation period of six months and as per terms of appointment she was entitled for regular status of an Ayah and corresponding pay scale of an Ayah as per NCWA. The concerned workman has been working as Ayah since the date of appointment till today and has put in continuous service still then the management is not paying her regular pay scale. As per provision of Standing Order and NCWA she is entitled to regular post of Ayah and pay scale. The concerned workman and the union represented before the management several times for her regular pay scale of an Ayah i.e. regularisation in the post of Ayah but till today without any effect. Seeing no other alternative an industrial dispute was raised before the A.L.C. (C), Hazaribagh, which ended in failure due to adamant attitude of the management. Thereafter, this dispute has been referred to this Tribunal for adjudication by the appropriate Government. The action of the management of not regularising to Smt. Jitni Devi as Ayah and not paying regular pay scale of an Ayah was illegal and unjustified.

In such circumstances it has been prayed that the Hon'ble Tribunal be pleased to pass an award by directing the management to regularise the concerned workman as Ayah and to pay regular pay scale of Grade-H atleast w.e.f. 24-6-91 with all arrears of wages and consequential attendant benefits.

3. The case of the management is that the concerned workman was appointed as a Trainee in Category-I and after completion of training she was regularised as Category-I worker. She was initially posted at Bokaro Colliery Hospital and later on she was transferred to Karo Special project/Konar A.A. Dispensary and joined there w.e.f. 4-1-93 ad since then she is working at Karo Special Project Dispensary. Karo Special Project has only dispensary without any bed and there is no requirement of Ayah. As such, the company has not approved any sanctioned post for Ayah at Karo Special Project Dispensary. There is a cadre scheme for para-medical staff, ward-boy/mid-wife/Aya. The promotion of ward-boy/Aya/Mid-wife in the post of technical and Supervisory Grade 'H' is being done according to recommendation of D.P.C. The seniority for the above post is maintained hospital/unit-wise. Since there is no requirement in T&S Grade 'H' at Karo Special Project Dispensary there is no post sanctioned in T&S Grade 'H'. The demand of the union for regularisation of Aya in T&S Grade 'H' is neither legal nor justified.

It has been prayed that the Hon'ble Tribunal be pleased to hold that the action of the management is

legal and justified and the concerned workman is not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The management produced MW-1, Fendrik Rogal Toppo.

The concerned workman produced herself as WW-1 (Jitni Devi) and proved documents as Exts. W-1 to W-4.

6. Main argument advanced on behalf of the concerned workman is that she has been working as Ayah, but the management is not regularising here as Ayah. She was appointed vide letter dated 18/23-3-91 in permanent vacancy and remained on probation for a period of six months. She has completed the probation period and she is continuing in service as per the terms of appointment but the management is not paying the regular pay scale of Ayah. She is entitled to be regularised as Ayah and payment of wages accordingly as per provision of Standing Orders and NCWA.

In this respect the management argued that the concerned workman was appointed as Trainee Cat. I worker and would be regularised after completion of training as Cat. I worker. She was posted at first at Bokaro Colliery Hospital and thereafter transferred to Karo Special Dispensary with effect from 4-1-93 and since then she is working there. In Karo Special Project there is no requirement of Ayah. As per Cadre Scheme for promotion of para medical staff, ward boy/midwife and Aya have been put in Technical Grade 'H' for which D.P.C. is done So, the demand of the concerned workman is not justified.

7. On behalf of the concerned workman appointment letter dated 18-3-91 (Ext. W-1); pay slip for the month of December, 2008 (Ext. W-2); pay slip for the month of January 2010 (Ext. W-3); pay slip for the month of December, 2009 (Ext. W-4) have been filed.

It has been argued that she worked for more than 20 years. She was to be paid Cat. I wages only for the period of probation and after completion of probation period she was to be regularised as regular Ayah and to be put in Grade 'N' which is the initial grade of Ayah. It has also been argued that she is entitled to be put in T&S Grade 'G' and Grade 'F' respectively after the completion of 8 years i.e. in Grade 'G' from 1-1-99 and Grade 'F' from 1-1-2007 as service linked up-gradation (SLU) and demanded payment accordingly in T&S Grade 'H', 'G' and 'F' as per provision of NCWAs. There is no cross-examination by the management on the works she does in the dispensary.

In this respect the management's witness MW-1 contradicted his own statement when he said in his cross-examination that there is bed in K.S.P. Phase-II to examine patient. He also said that as per NCWA there is post of Aya in the dispensary. He also stated 'I do not know what is the duties of Aya. I do not supervise the job of Aya. I do not know the reason for not giving here regularisation. There is no sanctioned post of Aya at Grade-II. I have no document to show that there is no sanction for the post of Aya in K.S.P. dispensary. The admitted position comes that the concerned workman has been working as Aya from very beginning and there is no reason why she is not being regularised as Aya and so the action of the management in not regularising the concerned workman as Aya is unjustified and illegal. Moreover, MW-1 admitted that Ayas have been kept in T&S Grade 'H' of NCWA. NCWA-VI came into effect with effect from 1-7-1996 for five years upto 30-6-2001 according to this agreement, as per para 2.11.1 any workman working on surface remains in one category or grade for eight years will be upgraded to higher category or grade and as such she is entitled to upgradation to T&S Grade 'G' with effect from 1-1-2000 and payment accordingly. Similarly NCWA-VII came into force from 1-7-2001 and the above provision remains. As such she is further entitled to upgradation to another higher grade in T&S Grade 'F' from 1-1-2008 and payment accordingly.

In the respect the management argued that the concerned workman was appointed and regularised as Category-I Mazdoor. According to the cadre scheme for para medical staff, the qualification of Aya is must be literate, have aptitude for the job. The mode of promotion in the post of Technical and Supervisory Grade 'H' Category-I Aya can be promoted only on sanction and vacant post through D.P.C.

When no D.P.C. was done that is not fault on the part of the concerned workman, so she is entitled to get promotion as per NCWA-VI and NCWA-VII.

Considering the above facts and circumstances, it shows that when pay slip has been issued designating her as Aya, therefore she is entitled to regularised as Aya and wages accordingly.

Management's witness MW-1 has already stated that it is not fact that she was appointed as apprentice. I do not supervise the job of Aya. I do not know the reason for not being given her regularisation. He does not have any document to show that there is no sanction for the post of Aya in K.S.P. dispensary.

All these show that the management arbitrarily is not given wages and promotion to the concerned workman as Aya.

8. In the result, I hold that the action of the management of Karo Special Project of M/s. CCL in

denying regularisation to Smt. Jitni Devi, Aya (Trainee) as Aya is not justified and legal. Hence, she is entitled for regularisation as Aya and payment of wages accordingly to T&S Grade 'H' 'G' and 'F' as per provisions of NCWA-VI and NCWA-VII with effect from January, 1992, 1-1-2000 and 1-7-2006 respectively with difference of wages of the above grades. The management is directed to implement the award within two months from the date of publication of the award in the Gazette of India.

This is my award.

H.M. SINGH, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2652.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-1/27 ऑफ 2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12011/126/2006-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O.2652.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-1/27 of 2007) of the Central Government Industrial Tribunal-cum-Labour Court-1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workman, which was received by the Central Government on 20-7-2012.

[No. L-12011/126/2006-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present : Justice G. S. SARRAF, Presiding Officer

Reference No. CGIT-1/27 Of 2007

Parties : Employers in relation to the management of Union Bank of India

And

Their workman

Appearances :

For the Management : Shri Sunil Prakash,
Management Representative

affidavit of Padma Neelakantan who has been cross-examined by representative of the Union.

6. Heard Shri V.H.Bhadha on behalf of the Union and Shri Sunil Prakash representative of the Bank.

7. The name of the concerned workman Mrs. F.M. Daruwala is not there in the schedule. The name of Mrs.F.M.Daruwala is also not mentioned in the statement of claim filed by the Union.

8. Mrs.F.M. Daruwala took voluntary retirement from the service of the Bank in January 2001 whereas the demand has been raised in May 2003. In my opinion an employee who has opted for voluntary retirement is not entitled to claim the status of workman for the purpose of Section 2(s) of the Act and raise an industrial dispute more than two years after the retirement. A plain reading of Section 2(s) of the Act indicates that a retired person is not intended to be included in the definition of workman and more so when he or she has received all benefits under the voluntary retirement scheme.

9. Mrs.F.M.Daruwala is nowhere in the picture. She has neither filed statement of claim nor has appeared as a witness. She has not given any authority to anyone to raise an industrial dispute on her behalf. V.H.Bhadha, General Secretary of the Union has admitted in cross-examination that Mrs.F.M.Daruwala is not a member of the Union. How the Union can raise a dispute on behalf of a person who is not a member of it?

10. It is thus clear from the above discussion that the demand raised on behalf of Mrs. F.M. Daruwala is not at all tenable in law.

11. As regards the merits of the matter the Bank's witness Padma Neelakantan has stated in her cross-examination

"The persons who were appointed temporarily on the post of Computer Operators were given officiating pay and not special pay for the period they were appointed on the post. This is not correct that officiating allowance/pay is part of salary for the purpose of superannuation benefits".

It is clear from the above statement that officiating pay given to those appointed temporarily on the post of Computer Operators was not a special pay and, therefore, officiating allowance/pay was not part of salary for the purpose of superannuation benefits.

12. In view of the above discussion I have come to the conclusion that the workman concerned is not entitled to any relief.

Award is passed accordingly.

Justice G.S. SARRAF, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2653.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल

बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या सं. 68/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12011/9/2006-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2653.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.68/2006) of the Central Government Industrial Tribunal-cum-Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workmen which was received by the Central Government on 20-7-2012.

[No. L-12011/9/2006-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO., 1

DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of the
Industrial Disputes Act, 1947

Reference No. 68 of 2006

Parties : Employers in relation to the management of
Punjab National Bank

and

Their Workmen

Present : Shri H.M. Singh, Presiding Officer

Appearances:

For the Employers : Shri U.K. Jha,
Sr. Manager, Bhagalpur

For the Workman : Shri B. Prasad, Authorised
Representative.

State : Bihar Industry : Bank

Dated, the 1-6-2012

AWARD

By Order No. L-12011/9/2006-IR (B-II) dated 14-6-2006 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-sec. (1) and sub-sec. (2A) of Sec. 10 of the I.D. Act,

For Union Bank of India Employees Union, Pune : Shri V.H. Bhadha,
 State : Maharashtra
 Mumbai, dated the 13th day of June, 2012.

AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act.) The terms of reference given in the schedule are as follows:

Whether the action of the management of Union Bank of India in not taking into consideration the special pay drawn by the employees for the payment of Ex-gratia though she was paid as officiating allowance for performing special duty and amount as special pay is correct and proper? If not, to what relief the concerned workman is entitled?

2. According to the statement of claim submitted by Union Bank of India Employees Union, Pune (hereinafter referred to as the Union) the workman covered in this reference was employed with the first party on a permanent basis in the clerical cadre. As per Staff Circular 4669 dated 7-11-2000 (Annexure 'A') the Bank must take into account special pay for calculation of the benefits of ex-gratia in case of voluntary retirement. Para 2 (B) of the Circular clearly states that special pay is to be taken into consideration for calculation of ex-gratia. It has, therefore, been prayed that the first party be directed to pay the dues taking into consideration the component of special pay as per demand notice with interest @ 21%.

3. According to the written statement it has nowhere been stated in the statement of claim that it has been filed on behalf of Mrs. M. Daruwala. The claim of the Union that it represents the workman covered in the schedule is false because the schedule does not show the name of the workman concerned. The Union raised an illegal demand before the Asstt. Labour Commissioner (Central) on behalf of Mrs. F.M. Daruwala in May 2003 whereas she had taken voluntary retirement from the service of the Bank in Jan. 2001 and as such she was not a workman within the meaning of Section 2(s) of the act and, therefore, the demand of the workman does not constitute an industrial dispute under section 2(k) of the Act. The Union has not shown whether it is a registered trade union under the provisions of the Trade Union Act 1926 and whether the said registration is valid. The Union does not represent all workmen in the Bank and, therefore, it is not entitled to raise any demand on behalf of this workman. The Union ought to have shown whether V.H. Bhadha who is claiming to be the General Secretary of the Union is duly authorised to raise the demand on behalf of the workman. The first party has raised various issues in para no. 8 of the written statement.

According to the written statement the first party offered voluntary retirement to all its employees in terms of a non-statutory scheme titled Union Bank of India Voluntary Retirement Scheme 2000-2001. More than 4000 employees applied for voluntary retirement under the above scheme and the employees who were eligible under the scheme were granted voluntary retirement from Jan. 2001 onwards. The consideration for voluntary retirement was payment of handsome amount of ex-gratia to the retirees to be calculated as per clause (b) of the scheme which is as under:

Amount of Ex-gratia :

An employee seeking voluntary retirement under the scheme will be entitled to an ex.-gratia amount mentioned below :

60 days salary (Pay plus stagnation increments plus special pay plus dearness relief) for each completed year of service or salary for the number of months service left, whichever is less.

The scheme also provided the mode of and the manner in which the payment of ex-gratia was to be made to the retiring employees. Mrs. Daruwala while working as clerk in the Zonal Office, Pune was assigned duty of computer operator w.e.f. 10-7-2000 purely on ad-hoc basis until further orders at the Pune City Branch in terms of memorandum no. WZII:PER:1426:2000 dt. 3-7-2000. It was clearly mentioned in the memorandum that she would be paid special allowance of Rs.633 p.m. applicable to the computer operator from the date she reported at Pune City Branch and so long she was required by the management to work as adhoc computer operator. It was also made clear to Mrs. Daruwala that the appointment was purely on adhoc basis and would not confer upon her any right whatsoever to be absorbed as computer operator on permanent basis unless she was eligible and was found to be suitable in the aptitude test. Mrs. Daruwala was not entitled to receive ex-gratia on the amount drawn by her as a special pay in terms of the scheme and the clarification issued by General Manager (P) as she was working on the post on adhoc basis only and not on a permanent basis. It has, therefore, been prayed that the reference be decided in favour of the first party.

4. The Union has filed rejoinder wherein it has reiterated its stand taken in the statement of claim and has stated that the written statement has not been filed within the prescribed time and, therefore, it should be rejected.

5. V. H. Bhadha has examined himself on behalf of the Union and he has been cross-examined by representative for the first party. The first party has filed

1947, referred the following dispute for adjudication to this Tribunal:

"Whether it is fact that Shri Sanjay Kumar Paswan was employed by the management of Punjab National Bank during the period from July, 1989 to September, 2003? If yes, whether the action of the management of Punjab National Bank, Patna in terminating the services of Shri Sanjay Kumar Paswan, peon, City Branch, Bhagalpur without complying Section 25-F of I.D. Act is legal and or justified? If not, what relief Shri Sanjay Kumar Paswan is entitled to?"

2. The case of the concerned workman is that he worked with the Punjab National Bank for the period from July, 1989 to September, 2003. He used to discharge all the duties of a peon on the instruction of the Manager, such as, taking out ledgers/registers from the Almirah and placing the same on the table/counters; carrying token Book; Scroll Register from Cash Department to Accounts Department; posting of mails to post office; distribution of the dak through Peon Book; stitching of currency notes as per requirement; serving water, tea to the staff members and customers as per requirement. He used to discharge him during from 10 A.M. to 6 P.M. He was used to be paid his wages on monthly basis through vouchers. Initially he was being paid wages @ Rs. 300 p.m. which was raised to Rs. 350 p.m., Rs. 400 p.m., Rs. 1200 p.m. and lastly @ Rs. 1500 p.m. The concerned workman worked with the management from 1-7-89 to 30-9-2003 uninterruptedly and on 30-9-03 in the evening the workman was informed that his services were no longer required. On the following day when he went to perform his duties he was stopped from working. The termination of the workman is covered under Sec. 2(oo) of the I.D. Act. The management failed to follow the condition precedent to retrenchment as per Sec. 25-F of the I.D. Act, 1947.

Under such circumstances, it has been prayed that the Hon'ble Tribunal be pleased to pass an award by directing the management to reinstate the concerned workman with back wages and to regularise his service as a peon.

3. The case of the management is that there was no employer-employee relationship between the Bank and Shri Sanjay Kumar Paswan. Therefore, at no point of time the concerned workman acquired the status of 'workman' as defined in Sec. 2(s) of the I.D. Act, 1947. So, Sri Paswan not being a workman of the Bank, the present alleged issue referred for adjudication by the appropriate Govt. cannot be treated as Industrial Dispute under Sec. 2(k) of the Act.

The concerned workman was not employed/appointed by Punjab National Bank during the period from July, 1989 to September, 2003 as a Peon at BO : Bhagalpur City and no duty of peon at the Branch was discharged by

him. Since he was not appointed by the Bank management as a peon so the demand of the concerned person for his reinstatement in service as peon and regularisation is not justified.

In such circumstances, it has been prayed that the Hon'ble Tribunal be pleased to hold that Sri Sanjay Kumar Paswan is not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The concerned workman produced himself as WW-1 (Sanjay Kumar Paswan) and the documents have been marked as Exts. W-1 series, W-2 series, W-3 and W-4.

The management produced MW-1, Sri Rajesh Kumar Jha and MW-2, Bibekananda Bagchi.

6. Argument advanced on behalf of the concerned workman is that he had worked with the management from 1-7-1989 to September, 2003 continuously and he completed more than 240 days attendance in each calendar year. He discharged all the duties of a peon from 10 A.M. to 6 P.M. at Bhagalpur City Branch of the Bank. His service was terminated without following the principle of natural justice.

In this respect the management's witness MW-1 who stated in his cross-examination that the payment was made by the Bank to the concerned workman through vouchers in which the signatures of Bank officials are there, as per Ext. W-1 series. The payment was made in different heads to the concerned workman, as per vouchers, Ext. W-2 series. In this respect management's witness MW-2 stated in his cross-examination that the concerned workman never worked in the Bank. Again he stated that the payment was made to Sri Sanjay by the Bank through vouchers. It is fact that the payment was made to him for stationery work etc., as per Ext. M-1 series. It shows that he was paid by the Bank which has been accepted by the management's witnesses. It shows that he was working with the Bank as per Ext. W-4 which shows that the letter had been written by the manager, Bhagalpur City Branch to Regional Manager, Patna for regularising the concerned workman who has worked continuously for many years and he was found hard working, sincere and honest. He has got copies of his T.C.'s community certificate etc. and he was working since 1989. This letter has been written by Er. Manager, Bhagalpur City dated 12-11-92 to the Regional Manager, Patna. As per ext. W-3 which shows that payment receipt by the Bank to the concerned workman and Ext. W-3 also shows that the payment was made to the concerned workman by the management.

7. In this respect the management's representative argued that he cannot be regularised in the service of the management.

8. On behalf of the concerned workman 2010(I) SCR 591 has been referred and referred 2011 Lab. I.C. 2799 in which Hon'ble Supreme Court also referred

AIR 2010 SC 1116 : 2010 AIR SCW 1357 : 2010 Lab IC 1433 : 2010(2) AIR kar R 163 : 2010 AIR SCW 6387 : 2011 (1) AIR Bom R 130 : (2010) 5 SCC 497 : AIR 2008 (T) ALJ 790 : AIR 2008 SC (Supp.) 1334 : 2008 AIR SCW 1474 : 2008 SC (Supp.) 342 : 2008 AIR SCW 223 : 2008 LAB IC 1375 : 2008 (3) ALJ 533 : AIR 2007 SC 528 : 2007 LAB IC 1955 : 2007 (3) AIR Kar R 433 : 2007 (2) AIR Jhar R 908 : 2007 AIR SCW 7305 : 2008 (1) ALJ 245 : AIR 2006 SC 1806 : 2006 AIR SCW 1991 : 2006 (3) AIR Kar R 320 : AIR 2003 SC 1872 : 2003 AIR SCW 1340 : 2003 SC 1872 : 2003 AIR SCW 1340 : 2003 LAB IC 1449 : 2003 AIR-Jhar HC R 548 : AIR 2003 SC 3044 : 2003 AIR SCW 3872 : 2003 ALL LJ 2057 : AIR 2001 SC 479 : 2001 AIR SCW 77 : 2001 Lab IC 476 : AIR 1993 SC 1388 : 1993 Lab id 428 : (1990) 3 SCC 682 : AIR 1984 SC 500 : 1983 Lab ic 1865 : AIR 1982 SC 854 : 1982 Lab IC 811 : AIR 1981 SC 422 : 1980 LAB IC 1292 : AIR 1981 SC 1253 : 1981 LAB IC 806 : AIR 1980 SC 1219 : 1980 Lab IC 687 : AIR 1976 SC 232 : AIR 1976 SC 1111 : 1976 Lab IC 769 : AIR 1974 SC 37 : 1974 Lab IC 133 : AIR 1964 SC 477 : AIR 1964 SC 1617 : AIR 1961 SC 644 : AIR 1960 SC 610.

9. Considering the above facts and circumstances, it shows that the concerned workman worked with the management from July, 1989 to September, 2003 continuously and as such he completed more than 240 days attendance in each calendar year. So, the action of the management of Punjab National Bank, Patna in terminating the services of Shri Sanjay Kumar Paswan, Peon, City Branch without Complying Section 25-F of the I.D. Act is not legal and justified. Accordingly, the concerned workman is entitled to be reinstated and regularised in the services of the management as a peon. The management is directed to reinstate and regularise the concerned workman, Sanjay Kumar Paswan, as a peon within 30 days from the date of publication of the award.

This is my Award.

H.M. SINGH, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2654.—ऑपोर्टिंग विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औपोर्टिंग विवाद में केन्द्रीय सरकार औपोर्टिंग अधिकरण/प्रम न्यायालय, अबलपुर के पंचाट (संदर्भ संख्या सीजीआरटी/एफसी/आर/84/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-7-2012 को प्राप्त हुआ था।

[स. एस-12012/210/99-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2654.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.CGIT/

LC/R/84/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 12-7-2012.

[No. L-12012/210/99-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/84/2000

Presiding Officer : Shri Mohd. Shakir Hasan

Shri G. Meena,
S/o G. Meena,
R/o Chanderpura, Tehsil Manasa,
PO Chanderpura,
Distt. Neemuch (MP)

Workman

Versus

The Regional Manager,
Central Bank of India,
Regional Office, 690, Shastri Nagar,
Ratlam (MP)

Management

AWARD

Passed on this 11th day of June, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/210/99/IR(B-II) dated 25-5-2000 has referred the following dispute for adjudication by this tribunal:-

“Whether the action of the management of Central Bank of India in terminating the services of the applicant Shri Gheesal Meena w.e.f. 29-4-99 is justified? If not, what relief the workman is entitled to?”

2. The case of the workman, in short, is that he was appointed in the month of June 1996 in Chandrapura Branch of the management Bank and was continuously working there till April 1996. He worked there under the instruction of the management of cleaning and Daftri. He was terminated orally on 29-4-99 without giving any notice or without retrenchment compensation. He worked against the vacant post and became entitled to be made permanent on the post. He raised dispute before the Assistant Labour Commissioner, Bhopal. Then the management appointed him on part time basis on 29-5-2000. It was assured that he would be made permanent on the post of Daftri after one year but he was not made

full time employee nor gave the post of Daftri. It is submitted that the management be directed to convert him full time employee with wages.

3. The management appeared and filed Written Statement to contest the reference. The case of the management, inter alia, is that the workman was engaged for few days i.e. less than 30 days on temporary basis as water boy during summer days. His job came to an end automatically with the ends of temporary work. It is stated that the provisions of the Industrial Dispute Act, 1947 (in short the Act, 1947) are not applicable in the case. It is stated that on looking to his pitiable condition, he was permitted to work on temporary basis as part time employee but it did not confer any right to be appointed on permanent basis. It is submitted that the reference be answered in favour of the management.

4. During the pendency of the reference proceeding a joint petition dated 1-5-2012 is filed on behalf of both the parties stating therein that the workman has been appointed permanently in the Bank services and is continuing in the services of the Bank. It is also stated that subsequently the workman is promoted from sub-staff to clerical cadre in accordance with the procedure. It is submitted that the dispute raised by the workman in reference has been resolved and now there is no dispute. In support of the above contention the management has filed the copy of the office order dated 14-3-2011. The said order goes to show that the workman Shri Ghisalal Meena is promoted in the clerical cadre w.e.f. 14-3-2011 and is posted at Ringnod branch of the Bank. Thus it is clear that the dispute raised by the workman with respect to the termination from service had been ended as he had already been taken in service and was subsequently promoted in the clerical cadre and now there is no dispute. Accordingly the reference is answered.

5. In the result, the award is passed without any order to costs.

6. Let the copies of the award be sent to the Government of India, Ministry of Labour and Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2655.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, यूको बैंक के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम्नायालय, जयपुर के पंचाट (संदर्भ संख्या 44/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-2011 को प्राप्त हुआ था।

[सं. एल-12012/123/2007-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2655.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2008) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workman, which was received by the Central Government on 16-7-2011.

[No. L-12012/123/2007-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

SH. N.K.PUROHIT, Presiding Officer

I.D. No. 44/2008

Reference No. L-12012/123/2007-IR (B-II) dated 5-3-2008

Shri Prabhunarayan Meena

S/o Sh. Kalyansahai Meena

Village & Post Santhal,

Distt : Dausa (Raj.)

V/s

The Dy. General Manager

UCO Bank

Zonal Office, Arcade International,

Civil Lines, Ajmer Road,

Ajpur.

Present :

For the Applicant : Sh. Pradeep Kumar Asthana

For the Non-applicant : Ex-party

AWARD

6-6-2012

1. The Central Government in exercise of the powers conferred under clause (d) of sub-section (1) and 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication :—

“Whether the action of the management of UCO Bank, Jaipur through DGM, Jaipur in dismissing the services of Sh. Prabhunarayan Meena, clerk vide order dated 15-10-2005 is just and fair? If not, what relief the workman is entitled to and from which date?”

2. The workman in his claim statement has pleaded that he was issued a charge sheet dated 3-11-2003 for having committed certain misconduct while posted as clerk-cum-

cashier. After disciplinary proceedings against him he was dismissed from service on 15-10-05. The workman assailed the said impugned order dated 15-10-05 on the grounds that the enquiry officer did not consider his defence and his findings are perverse; that the enquiry officer did not provide opportunity to defend; that desired material for his defence was not provided; that the whole enquiry has been conducted in violation of principles of natural justice and disciplinary authority has passed the impugned order maliciously without application of mind. Thus, the workman has prayed that impugned order dated 15-10-05 be declared as illegal and unjustified and he may be reinstated with all consequential benefits.

3. In reply, the management has denied the allegations of bias and malafides alleged by the workman and averred that charge sheet was issued to the workman for the alleged charge of embezzlement and show cause notice was issued to him and after disciplinary proceedings he was dismissed from the service vide impugned order dated 15-10-05. The management has pleaded that the enquiry conducted against the workman was in conformity with the principle of natural justice.

4. For hearing on the point of fairness of enquiry, directions were given to produce the entire record pertaining to enquiry. The management sought several adjournments to produce the enquiry record but failed to produce the same. On 12-7-2011, none appeared on behalf of the management, therefore, ex-party proceedings were drawn against the non-applicant.

5. In above factual backdrop vide order dated 8-2-2012, the domestic enquiry conducted against the workman has been held unfair.

6. It is well settled that if an enquiry has been held to be defective or unfair, the Tribunal in order to satisfy itself about the legality and validity of the order has to give an opportunity to the employer for justifying his action and it is opened to its employee to adduce evidence contra. But an employer who wants to avail himself an opportunity to adduce evidence before the tribunal to justify his action should ask for it at the appropriate stage.

7. In case in hand, ex-party proceedings have been drawn against the management on 12-7-2011 and management has not availed the opportunity of adducing evidence for justifying his action.

8. Heard ex-party argument of learned representative on behalf of the workman and perused the record.

9. The learned representative on behalf of the workman contends that enquiry conducted against the workman has been found unfair and employer has not availed the opportunity to justifying his action before the tribunal, therefore, the impugned order be set aside and the workman be reinstated with consequential benefits. He has also referred decisions rendered in 2004 (100) FLR 843,

2008 (5) SCC 554, 1973 (1) SCC 813.

10. U/s 11(A) of the I.D.Act, if the tribunal is satisfied that the order of discharging or dismissal was not justified, it may by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such another relief to the workman including of the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

11. In decision 2004 (100) FLR 843 Hon'ble Apex Court has held :—

“Section II-A of the Industrial Disputes Act, 1947 (for short ‘the Act’) confers a wide power upon the Labour Court, Tribunal or the National Tribunal to give appropriate relief in case of discharge or dismissal of workman. While adjudicating on a reference made to it, the Labour Court, Tribunal or the National Tribunal, as the case may be, if satisfied that the order of discharge or dismissal was not justified, it may, while setting aside the same, direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.”

12. In present case, ex-party proceedings have been drawn against the management of the bank and the management has failed to produce the record pertaining to disciplinary proceedings conducted against the workman, therefore, the enquiry conducted against the workman has been held unfair vide order dated 8-2-2012. The management did not avail opportunity to justifying its action and prove the charges leveled against the workman before the tribunal. Under these circumstances, the impugned order dated 15-10-2005 is liable to be set aside and the workman is entitled to be reinstated.

13. The charges levelled against the workman are pertaining to alleged embezzlement while working as clerk cum-cashier of the bank. The domestic enquiry conducted against him has been held invalid merely on this ground that the management of the bank has failed to produce enquiry record. Having regard to all the facts and circumstances of the case, interest of justice would be subserved if the workman is reinstated without any back wages.

14. Since, the enquiry conducted against the workman has been held unfair, the action of the management of the bank in dismissing the services of the workman is not justified. Therefore, the impugned order dated 15-10-2005 is set aside. The workman is entitled to be reinstated. He will not be entitled to back wages. The reference under adjudication is answered accordingly.

15. Award as above.

16. Let a copy of the award be sent to Central Government u/s 17(1) of the I.D.Act for publication.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2656.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. पूमपुहार शिपिंग कॉरपोरेशन लि./मै. एक्सेल निट एंड टाइड एजेंसी/मै. परमसिवन एण्ड संस के प्रबंधतांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 5/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-33011/3/2009-आई आर (बी-II)]

श्रीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2656.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 5/2010) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Poompuhar Shipping Corporation Ltd./M/s. Excel Neat and Tidy Agency/M/s. Paramasivan and Sons and their workmen, which was received by the Central Government on 20-7-2012.

[No. L-33011/3/2009-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 22nd June, 2012

PRESENT : A. N. JANARDANAN, Presiding Officer,
Industrial Dispute No. 5/2010

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of M/s. Poompuhar Shipping Corporation Ltd., Contractor M/s. Excel Neat and Tidy and M/s. Paramasivan and Sons and their Workmen)

BETWEEN

National Harbour Workers Union : 1st Party/Petitioner
147, Great Cotton Road
Tuticorin-628001
Union

Vs.

1. M/s. Poompuhar Shipping Corp. Ltd. : 2nd Party/1st
473, Anna Salai
4th Floor, Nandanam
Chennai-600005
Respondent

2. M/s. Excel Neat and Tidy Agency : 2nd Party/2nd
6, P. T. Rajan Road
Bibikulam
Madurai-625007
Respondent

M/s. Paramasivan and Sons

Sundar Illam
Muthiahpuram
Tuticorin-628005

APPEARANCES:

For the 1st Party/Petitioner Union : M/s R. Rajarajan,
K. Gurusamy Raja
and D. Muthukumar

For the 2nd Party/1st Respondent : M/s. Gupta &
Ravi, Advocates

For the 2nd Party/2nd Respondent : Set Ex-parte

For the 2nd Party/3rd Respondent : Sct Ex-parte

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-33011/3/2009-IR(B-II) dated 8-1-2010 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of M/s. Poompuhar Shipping Corporation Ltd. and the Contractor M/s. Excel Neat and Tidy in not paying the fair and comparable wages to the workers engaged for spillage clearing and recording at Tuticorin Port area as demanded by National Harbour Labour Union, Tuticorin is justified or not? What relief the workmen are entitled to?”

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 5/2010 and issued notices to both sides. Both sides (Petitioner & R1) entered appearance through their Advocates and filed Claim, Counter and Rejoinder Statements as the case may be.

3. As per order dated 5-5-2011 on IA 24/2011 Third Respondent was impleaded. Initially though Second and Third Respondent appeared, lately, they remained absent and are called absent and set ex-parte. Only the First Respondent filed the Counter.

4. The Claim Statement averments briefly read as follows:

By the Claim Statement the case of following 14 employees viz. S/Sri Joseph Ponniah, G. Selva Kannan, S. Senthil Kumar, P. Paramasivan, D. Alphonse, S. Marimuthu, S. Sundaralingam, T. Maria Joseph Leborius, A. Thommal Anthony, S. Sakthivel, A.S. Saravanakumar, C. Balamurugan, M. Umaya Satyamoorthy, S. Natarajan working as Deck Cleaners and Recorders in the 1st Respondent Corporation is espoused by the petitioner, a registered trade union. The dispute is regarding non-payment of fair and equitable wages to the workers by the First and Second Respondent despite several

representations. The First Respondent M/s. Poompuhar Shipping Corporation Ltd. is a Tamil Nadu State Government Undertaking. The First Respondent is engaged in the business of handling and transporting of coal from the vessels in the Tuticorin Port to the Thermal Power Station. Coal is transported from the ports of Haldia, Paradip, Vizag, etc. to the Tuticorin Port by the R1's vessels and other chartered vessels. R1 has employed 18 permanent workers and 14 contract workers for unloading the coal during which process there would be spillage of coal in the deck of the vessels which has to be cleaned and cleared by the contract workers engaged by R1 through R2. Duty of contract labour is to clean the spillage, record the delay of vessels, vessel position and crane position. The contract workers engaged for this type of work are deck cleaners and recorders, ship handlers, recorders, etc. Out of the 14 labourers, 11 are deck labourers and the 3 are records-cum-supervisors. The work is continuous. Therefore the R1 has to continuously engage workers and who are employed continuously. The contract workers are engaged for more than 240 days in a calendar year and 480 days in 24 months. Though they are entitled to be regularized R1 with ulterior motive of avoiding payment of wages, continuously employ them as contract labour through R2. R1 has been engaging various Contractors from the year 1983. The Contractor is paying very low wages in exploitation of cheap labour. The wages as on 31-3-2007 for Deck Cleaners and Time Keepers is Rs. 80 per day, paid with inordinate delay. R1 had undertaken before Assistant Commissioner of Labour (Central), Madurai for payment of minimum wages and all other benefits and also to make payment to the Contractor based on labour and not in shipwise. Difference of wages from 20-4-2000 to 31-10-2000 was not insisted upon necessitated by the Union on the request of First Respondent in order to keep the cordial atmosphere. Wages of Rs. 80 was meagre and less than the minimum wages. Under a settlement between the Petitioner Union and the Contractor in 2007, in the presence of R1 representatives workers are now receiving Rs. 120 per day. R1's employees doing the same work get Rs. 399.25 per day which is discriminatory. Employees in Tuticorin Port Trust Cargo Handling Labour Pool in Coal Jetty-II doing similar duties of contract labour get Rs. 450 per day. R1 employing the Contractor has held to the fix the wages for the contract labour R1 is shifting its responsibility to the Contractor's shoulders. After 2007 settlement there has been no increase in wages of the contract labour despite several requests. Workers are suffering in untold hardship. Tuticorin Stevedors Association (Labour Pool) renamed as TPTCLP in Coal Jetty get Rs. 13,500 at Rs. 450 per day. R1 is paying Class-IV Rs. 11,978 per mensen i.e. Rs. 399.25 per day. The workers are entitled to the minimum wages and wages at par with their counter parts. First Respondent shall be directed to fix the minimum and leave wages as above with provision for 25% increase annually as Dearness Relief and also for payment by R1 under

direct payment system instead of through Contactors to avoid exploitation.

5. Counter Statement averments, filed by First Respondent bereft of unnecessary details are as follows:

The dispute is not maintainable against R1 and is to be dismissed. The workmen are not employees of R1. There is no employer-employee relationship interse. They can raise dispute only against their employer, R2. R1 is a registered principal employer under the Contract Labour (Regulation & Abolition) Act, 1970 and the Contractors are also licensed under the Act. Cleaning of spillage of coal is entrusted to Contractor under tender process. It is not a perennial work. There will be work on ships who call at Tuticorin Port. Contractors engage, control and supervise their own workmen and pay wages and other statutory dues directly to the workmen. There is no question of claiming any relief from R1. R1 ensures that Contractor is complying with all statutory instructions including Minimum Wages Act. Work done by employees of R1 and that by the concerned workmen are not same and similar. Hence there cannot be any comparison. Petitioner cannot insist on their Employer/Contractor with same and similar wages merely because some other employer pays the higher wages without reference to the paying capacity of the employer and the degree of responsibilities of such employees. After generating a contract through tender process to a lowest bidder by R1, petitioner cannot insist to pay higher wages. R1 can ensure for payment of only more than minimum wages. The workers have to demand their Employer/Contractor for higher wages and not against R1, a principal employer. It is denied that at Coal Jetty-I contract labour is not paid minimum wages. They can raise dispute only against their Contractor R2. The claim is to be dismissed.

6. Rejoinder Statement contentions briefly read as follows:

The workmen are directly working under the R1 and are supervised by R1. For leave and other permission they have to approach R1. The workmen have been working for the last 15 years under various name sake Contractors. As principal employer R1 is responsible to the wages payment by the Contractors. R1 never stated any work of permanent employees in the counter. Being Principal Employer R1 has not taken steps to payment of correct and prescribed wages by the Contractor. Direct payment system is existing in FC1 where workers wages are revised every two years considering the DA increase.

7. Points for consideration are:

- (i) Whether the action of the Respondents in not paying the fair and comparable wages to the workers is justified or not?

(ii) To what relief the concerned workmen are entitled?

8. Evidence consists of the testimony of WW1 and WW2 EX.W1 to EX.W14 on the petitioner's side and the oral evidence of MW1 and EX.M1 to EX.M29 on the Respondent's side.

Points (i) & (ii)

9. Heard both sides. Perused the records, documents, evidence and written arguments on either side. Both parties argued in terms of their contentions in their respective pleadings with reference to documents and rulings of the Supreme Court and various High Courts. As argued by the learned counsel for the Respondent there is no employer-employee relationship between the workmen and the 1st Respondent. As per EX.M25-Minimum Wages notification of the Government of India dated 20-10-2011 minimum wages payable is Rs. 171 per day to an unskilled worker, being Basic Pay Rs. 120 and D.A. Rs. 51 which is being paid by the present Contractor as is evident from Ex.M26-Muster Roll and Wage Register of the R3. The responsibility of the 1st Respondent lies only in seeing that the workmen are paid minimum wages by the Contractor. From the evidence of MW1 it can be seen that the workers are being paid not only minimum wages but also paid P.F. and ESI contributions, bonus, double wages on National and festival days, wages on weekly holidays and overtime wages which facts do not stand challenged in cross-examination. As rightly argued on behalf of the R1, the 1st Respondent cannot be said to have any hold to fix the wages for contract labour in a tender process which is an affair between the 1st Respondent and the Contractor, as contracting parties. It cannot enhance the wages payable to the contract workers by the Contractor. The said aspect cannot form subject of a dispute between the petitioner and R1. Only in an industrial dispute between an employer and employee this Tribunal could have jurisdiction to adjudicate. No direction can be given to the Principal Employer to enhance the rates payable to the Contractor being beyond jurisdiction of this Tribunal. Even in a tender process the least rate includes and should include payment of wages on par with the minimum wages under the statute. Enhancing rate of tender is against the purpose and object of tender process. Tribunal's jurisdiction limits to the terms of reference made to it. It cannot go into the question of regularization of employees by the 1st Respondent, Tribunal cannot pass orders beyond terms of reference. Demand for increase in wages on the basis of service rendered is alien to reference. The Contractor changes every year and therefore Contractor also cannot be asked to increase wages. Remedy of the workmen lies with the 2nd and 3rd Respondent. In order to seek permanency in R1 corporation or for abolition of contract labour an independent ID has to be raised, which is not the case on hand. In the absence of a reference in terms thereof question of their absorption

does not arise. Question whether the workmen have put in 240 days of continuous service in a year or 480 days in two consecutive years is of alien consideration. The workmen are not entitled to any relief from R1. They may make a demand for increase in wages only from R2 and R3. Ex.W4-Salary Slip issued to Alagarsamy working in Tuticorin Port Trust, a Central Government Undertaking relied on by the petitioner is of no help to advanced the case of the petitioner since there is no other material to prove the nature of work performed by him. Ex.W5-Salary Slip issued to one Mrs. Lakshmi, Office Assistant in R1's office is also of no avail since her work is different from the work performed by the workmen. Ex.W12-Settlement signed between IOC Employees Union and its Contractor is discernibly between contract labour and their Contractor, where Principal Employer is not in the picture. Again nature of work in IOC and in R1's corporation is different and are not comparable institutions. Same is the case with Ex.W10 and Ex.W13-Orders passed by authorities under the conferment of permanent status act which does not pertain to the work done by the workmen or the nature thereof. Without a fruitful comparison regarding the nature of work by the allegedly similar workmen in other undertaking as claimed by the workmen being possible, it cannot be established that the workmen are doing similar work and are entitled to similar payments. No proper comparison can be or made in the absence of full particulars regarding nature of duties, degree of responsibilities and the background circumstances in which the duties are performed by the different workmen who are allegedly performing similar duties. When there is no post of Deck Cleaners and Recorders in the 1st Respondent Corporation as is evident from the testimony of WW1 as permanent employees the claim for parity in wages by the workmen on par with such non-existent employees is baseless.

10. Reliance was placed on behalf of the petitioner in the decision of the High Court in :

- The High Court of Jammu and Kashmir in SRI MATA DEVI SHRINE BOARD AND ANOTHER VS. GANDARB SINGH AND OTHERS (2010-4-LLN-821) held "... (4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be to the contract labour employed by the Contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

11. Reliance was placed on behalf of the Respondent to the decision of the Supreme Court in :

- STATE BANK OF BIKANER AND JAIPUR VS. OM PRAKASH SHARMA (2006-5-SCC-123) wherein it is held “14 The jurisdiction of the Labour Court emanated from the order of the reference. It could not have passed an order going beyond the terms of the reference. While order going beyond the terms of the reference. While passing the award, if the Labour Court exceeds its jurisdiction, the award must be held to be suffering from a jurisdictional error. It was capable of being corrected by the High Court in exercise of its power of judicial review”.
- The decision dated 21.02.2001 in CIPLA LTD. VS. MAHARASHTRA GENERAL KAMGAR UNION AND OTHERS it was held “.... The respondent union came to the Labour Court with a complaint that the workmen are engaged by the appellant through the Contractor and though that is ostensible relationship the true relationship is one of master and servant between the appellant and the workmen in question. By this process, workmen repudiate their relationship with the Contractor under whom they are employed but claim relationship of an employee under the appellant. That exercise of repudiation of the contract with one and establishment of a legal relationship with another can be done only in a regular industrial tribunal/court under the ID Act”.
- BHOGPUR COOPERATIVE SUGAR MILLS VS. HARMESH KUMAR (2007-1-LLN-95) wherein it is held “7. The Labour Court derived its jurisdiction from the terms in reference. It ought to have exercised its jurisdiction within the four corners thereof”.

12. On a consideration of the rival contentions, I am to hold that as regards the claim against the 1st Respondent in not paying the fair and comparable wages to the workers, the petitioner is not entitled to succeed except to the extent indicated below. The responsibility of the 1st Respondent as Principal Employer lies in ensuring that Contractor complies with all statutory mandates. There is no case for the petitioner that payments are not made by the Contractors at all. Their case is that they are not being given fair and comparable wages. The R1 can and should enforce payment of more than minimum wages to be paid by the Contractors. It is for the workmen to see that they are paid the same by the Contractors. It is also upto the workmen to approach the Contractors R2 and R3 for payment of the agreed wages and other benefits. As long as they continue to get at the rates agreed they have no

any remedy against the R1 for getting the payment of wages or part thereof, if any, as remains unpaid by the Contractor to be got realized from the R1 as provided in the decision cited supra (2010-4-LLN-821) where after the Principal Employer would be entitled to recover the same from the Contractor either by deduction from any amount payable to the Contractor or as a debt payable by the Contractor.

13. Resultantly it is ordered that the workmen are not entitled to any claim other than what is stated above from R 1. As against R2 and R3, who are ex-parte, in order to succeed the petitioner has to independently establish that by cogently proving that they are entitled to fair and comparable wages and that the denial of the same is not legal and justified. The evidence let in this case with the R2 and R3 as parties is not sufficient to enter a finding to that score. Therefore as against R2 and R3 also they are bound to fail and are not entitled to any relief.

14. The reference is answered accordingly.

(Dictated to the PA, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd June, 2012)

A. N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1. Sri Peter Ponraj
WW2 Sri S. Marimuthu

For the 2nd Party/Management: MW1, Sri K. Kanniah

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
EX.W1	14-6-2007	Letter issued by the Petitioner Union
EX.W2	30-6-2008	Tender document
Ex.W3	9/2008	Letter issued by the Petitioner Union
EX.W4	3-1-2010	Salary Bill of one Alagarsamy
Ex.W5	1-1-2010	Salary Bill of one Lakshmi
Ex.W6	—	Petitioner's work detail
EX.W7	3/2010	Letter of ESI Authority
Ex.W8	13-7-2010	Letter from the 1st Respondent
Ex.W9	2008-2009	Annual Statement of Accounts for the year 2008-2009 of Mr. Marimuthu in EPF Scheme
Ex.W10	29-10-2010	Order passed by Inspector of Factories, Nagercoil in Na.Ka. No. 032/2009
EX.W11	18-5-2011	Details given by EPFO regarding employer's contribution

EX.W12 13-7-2011	Section 12(3) Settlement made between Tuticorin terminal, Indian Oil Corporation Employees Union and its Contractor	EX.M14 18-5-2010	Order passed by the Regional Labour Commissioner (Central), Chennai in Claim Application No. 12 of 2010	
EX.W13 11-11-2011	Order passed by Inspector of Factories, Tuticorin in Na.Ka.No. E/71/2011 for Poompuhar Shipping Corp. Employees Union and 3rd Respondent	EX.M15 11-6-2010	Contract order given by the 1st Respondent to the 3rd Respondent	
EX.W14 1-2-2012	Letter referring complaint and for compliance of proper deductions/ remittance of statutory subscription to the 1st Respondent	EX.M16 24-6-2010	Letter from Labour Enforcement Officer, Madurai to the M/s. Clean Care Service Centre, Madurai	
On the Management's side				
Ex.No.	Date	Description		
Ex. M1	4-9-2007	Settlement under Section-12(3) entered between the Petitioner Union and M/s Rajan & Co., Tirunelveli	EX.M19 2-3-2011	License issued by the Ministry of Labour and Employment, Madurai to the 3rd Respondent
Ex. M2	October 2007	Wage Register	EX.M20 6-4-2011	Notification for payment of minimum wages issued by the Ministry of Labour and Employment, Chennai
Ex. M3	27-7-1994	Certificate of Registration issued by the Ministry of Labour, Madras to the 1st Respondent	EX.M21 12-8-2011	Contract order given by the 1st Respondent to the 3rd Respondent
Ex. M4	30-4-2007	Contract order given by the 1st Respondent to the M/s Rajan & Co., Tirunelveli	EX.M22 13-8-2011	Agreement entered between the 1st Respondent and the 3rd Respondent
Ex. M5	30-11-2007	Contract Order given by the 1st Respondent to the 2nd Respondent	EX.M23 Sept. 2011	Muster Roll and wage register of the 1st Respondent
Ex. M6	30-11-2007	Agreement entered between the 1st Respondent and the 2nd Respondent	EX.M24 Sept. 2011	ESI and EPF contribution remitted by the 3rd Respondent
Ex. M7	1-7-2008	Letter given by the 2nd Respondent to their contract labours	Ex.M25 20-10-2011	Notification for payment of minimum wages issued by the Ministry of Labour and Employment, Tuticorin
Ex.M8	March 2008	Wages and Salary Slip given by the To 2nd Respondent to their contract March 2009 labours	EX.M26 October 2011	Muster Roll and Wage Register of the 3rd Respondent
Ex.M9	April 2008	ESI and EPF Contribution remitted To by the 2nd Respondent	EX.M27 October 2011	ESI and EPF contribution remitted by the 3rd Respondent
Ex.M10	9-1-2008	Contract Order given by the 1st Respondent to M/s. Clean Care Service Centre, Madurai	EX.M28 12-8-2011	Order passed in WP No. 9116 of 2007
EX.M11	March 2009	Wages paid by M/s. Clean Care to Aug 2009 Service Centre, Madurai to their contract labours	EX.M29 28-3-2012	Authorization letter
EX.M12	31-3-2009	Order passed by the Ministry of Labour, New Delhi	नई दिल्ली, 23 जुलाई, 2012	
EX.M13	10-8-2009	Failure report issued by the Assistant Commissioner of Labour (Central), Madurai	का.आ. 2657.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम स्थायालय, नं. 2, धनबाद के पंचाट (संदर्भ संख्या	

1/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/141/2002-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2657.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No 1/2003) of the Central Government Industrial Tribunal/Labour Court, No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 20-7-2012

[No. L-12012/141/2002-JR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT, DHANBAD

PRESENT: Shri. Kishori Ram, Presiding Officer
(In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act.)

Reference No. 01 of 2003.

Parties: Employer in relation to the management of Central Bank of India, Patna and their workman.

Appearances :

On behalf of the workman : Mr. B. Prasad, Ld. Advocate

On behalf of the employer : Mr. R.K. Singh/P. K. Mishra,
Management's Representatives

State : Jharkhand

Industry : Banking

Dated, Dhanbad, the 8th June, 2012.

ORDER

The Government of Indian, Ministry of labour in exercise of the powers conferred on them under Section 10 (1)(d) of the I.D. Act. 1947 has referred the following dispute to this Tribunal vide their Order No. L-12012/141/2002 /IR (B-II) dt. 29-11-2002.

SCHEDULE

“Whether the action of the management of Central Bank of India, VKSU, Extension Counter Ara Branch, Bihar in terminating the services of Shri Anand Kumar is justified? If not, what relief the workman is entitled to?”

2. The case of the workman in brief is that workman Anand Kumar was orally appointed by the Management

of Central Bank of India on 01-12-1996 to discharge all the duties of a peon at its Veer Kunwar Singh University (V.K.S.U.) extension centre, Ara. He used to perform the duties as a peon from 10 A.M. to 5.30 P.M. (i) opening of Almirah and taking out Ledgers, Registers, putting the same on tables, counters (ii) taking out Cash Box from Strong Room and putting it on counter of Cash department (iii) carrying of token books, scroll book from Account Department to Cash Department and vice versa (iv) Distribution of Bank Dak through peon Book, (V) posting of mails (vi) serving water/tea to the members of staff, (vii) cleaning premises, table, chairs wherever required (viii) issuance of token, writing cash receipt and payment register and other clerical work in exigencies, and (ix) stitch of vouchers/currency notes in exigency. He was paid wages initially Rs. 15 and later on Rs. 20 daily. He served so at the instruction of the Branch Manager upto 16-2-2002. He was also forced to take payment in different names Rajesh Kumar, Ashutosh Kumar at times in fear of loss of his job. He continuously served the Branch for more than five years. But When he went for duty on 18-2-2002, he was stopped from his duty, informing termination of his service without a legal notice/retrenchment compensation. Despite his several times requests for his reinstatement in services, no positive step was taken for it. Even the failure in conciliation proceeding in the Industrial Dispute raised by him before the ALC (C), Patna resulted in the reference for adjudication. So the action of the Management in terminating him is legally unjustified, though he was also a victim of unfair labour practice. So he is entitled to his reinstatement as a peon with back wages equal to a permanent peon, and to regularisation accordingly.

3. Irrespective of repetition of facts, the workman has, specifically denied the allegation of the Management and stated in his rejoinder that there are water taps, so no dearth of water in the Bank premises, was required to get payment after putting his signature on the reverse side of the debit vouchers. The payment was made through different names. He worked for more than 240 days prior to his termination.

4. Whereas denying the aforesaid allegation the case of the management is that the complainant has occasionally supplied water to the Branch at the cost of water which was paid to him through the vouchers dt. 28-9-2000, Jan. 13, April 3, May 5, July 30, Nov. 24, Dec. 1, 10, and 31, 2001 (Photo copies attached). He was never employed by the Bank, nor an employee of it, as his alleged termination is not correct, as there has never been any relationship of employer and employee between the Bank and him. It exists no industrial dispute. He is not entitled to claim for any service in the Bank.

FINDING WITH REASONING

5. In this case, WWI Anand Kumar, the Workman for himself and MWI Prabhat Kumar Mishra, the

Branch Manager for the management have been examined.

Mr. B Prasad, the authorised Representative for the workman submits that workman Anand Kumar regularly worked at Central Bank of India, Veer Kunwar Singh university, Extension counter, Arrah, now a Branch from 1-12-1996 to 16-2-2002 for more than five year continuously, had also worked like a permanent workman for 240 days preceding his termination. He used to discharge all his duties from 11 a.m. to 5.30 p.m. on the instruction of the Manager; he used to get his wages initially Rs. 15 raised to Rs. 20 daily which was paid through debit vouchers of the bank; and this his termination as under Sec.2(oo) of the I.D. Act was illegal, and he is entitled to regularisation in his service. His argument is based on the Ruling 2010(1) SCR 591, Harjender Singh Vs. Punjab State Warehousing Corp.

On the perusal of the material evidences oral and documentary as adduced by both parties, I find that neither Ext. W.1 Series (34 Xerox Sheets of bank debit vouchers for the year 1999-2000 nor Ext. W. 2 (Xerox Xopy of the letter dt. 4-10-2001 issued by the Office Incharge concerned relating the working of the workman on casual basis since 1996) proves his uninterrupted continuous casual service as water supplier for 240 days in any of the calender year 1999, 2000, or even in the proceeding year 1998 (Ext. M. 1 series-xerox copies of 23 Bank Vouchers) as defined u/s 25 'B' of the industrial Disputes Act. Rather the payment of aforesaid daily wages to the workman under his signatures signifies his casual working irregularly. Admittedly his irregular engagement was for casual worker whenever required as asserted by the Office Incharge's letter (Ext. W. 2).

6. So far as the aforesaid ruling is concerned I have gone through it. It relates to a case of appellant (Harjender Singh) who was Work Charge Motor Mate for seven months, then appointed as Work Munshi for three months, though the tenure in the second order dt. 4-5-1987, he was continued in service till 5-7-1988, on which date the Managing Director had issued one month's notice for his termination. For the ratio decidendum of it is quite distinct from the factum of the present case under adjudication. To my aspect, the use of the term 'termination' as covered under the definition 'Retrenchment' to this case seems a little bit exaggerated for making it more effective.

7. Further plea of Mr. Prasad the Learned Representative for the workman concerns with applicability of the management's letter dt. 29-8-2001 and Central Office Circular dt. 12th March, 1991 (Ext. W. 3 series) to the case also stands beyond the pleading of the Workmen; so they are legally inadmissible in the case.

In result, it is held that since the question of terminating the services of the casual workman does not arise in the case; likewise the issue whether the action of

the management of Central Bank of India, Veer Kunwar Singh University Extension Counter, Ara Branch, Bihar in terminating the service of Sri Anand Kumar is justified arises not at all as the alleged termination is quite inapplicable to a purely casual worker. Therefore, the workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2658.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/66 ऑफ 2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/63/2007-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2658.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-2/66 of 2007) of the Central Government Industrial Tribunal/ Labour Court No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workmen, which was received by the Central Government on 20-7-2012

[No. L-12012/63/2007-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

Present : K. B. KATAKE, Presiding Officer

REFERENCE NO.CGIT-2/66 of 2007

**EMPLOYERS IN RELATION TO THE MANAGEMENT
OF BANK OF BARODA**

The General Manager

Bank of Baroda,

Mumbai Metro North Region, 3rd Floor

South Wing, W.H. Marg

Ballard Estate,

Mumbai-400 001.

AND

THEIR WORKMEN

Smt. Meena Reddy

Room No. 20, Ajit Khan Chawl

Marol Naka, M.V. Road

Makwana Road

Marol

Mumbai-400 059.

Appearances :

For the employer : Mr. L.L.D'Souza, Representative.

For the workman : Mr. Surendra Yadav, Advocate.

Mumbai dated, the 6th June, 2012.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-12012/63/2007 -IR , (B-II), dated 28-11-2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Bank of Baroda, Mumbai Metro North Region, Mumbai in terminating the services of Smt. Meena Reddy w.e.f. February 2005 is justified? If not, what relief the workman, Smt. Meena Reddy is entitled to?"

After service of notices both the parties appeared through their respective representatives. In response to the notice, the second party workman filed her statement of claim at Ex-4. According to her, since 1991 she was working as a sweeper in the Marol Record room of Bank of Baroda. Earlier she had worked at Saki Naka Branch from 16-9-1988. She worked at Marol Record room after 31-10-1996. Even after 1996 she continued in service. She worked in the Bank upto February 2005. She was working as a full time sweeper on daily wages for a long time. Initially she was getting wages Rs.1800 p.m. Gradually it was increased and in February 2005 her wages were Rs. 4,500.

(3) In February 2005 she was illegally removed from the services. She made representation to the officers of Bank of Baroda. However they did not take any cognizance. Workman has approached to the ALC (C). As the conciliation failed, on the report of ALC, the Ministry of Labour & Employment sent the reference to this Tribunal. According to the workman, she was removed illegally without any inquiry or retrenchment compensation. Therefore she prays that the action of the management in terminating the services of the workman be declared illegal, invalid and ab-initio. And she be reinstated in the services with continuity of services.

(4) First party management resisted the statement of claim vide their written statement at Ex-7. According to them, the dispute is not tenable as the workman herein was never employee of the Bank. She was never appointed in the service of the Bank. Therefore question of discharge, dismissal or retrenchment does not arise. According to them the workman was engaged as a daily wager from time to time and was paid daily wages for the work she had done. Her work ended every day. She was never regular

employee of the Bank. Hence the reference is not maintainable and deserves to be rejected. She was never appointed by the Bank as Sweeper, therefore, question of termination of her services in February, 2005 does not arise.

(5) According to them while she was working on daily wages at Marol record-room some Bank documents were stolen by the second party. She has also admitted to have stolen the documents and prayed for apology. Thereafter, she was not engaged for the work as a daily wages sweeper. She was never Bank employee, therefore, question of her illegal termination does not arise. Consequently, she is not entitled to get the relief of reinstatement with full back wages as has been prayed for. Therefore, they pray that the Reference be dismissed with costs.

(6) The second party workman vide her Rejoinder Ex.9 denied the allegations and contents in the W.S. and repeated the contents in the statement of claim.

(7) Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Issues	Findings
(1) Whether Smt. Meena Reddy was employee of Bank of Baroda, Metro North Region, Mumbai?	Yes
(2) Whether the action of management of Bank of Baroda, Metro North Region, Mumbai, terminating the services of Smt. Meena Reddy, is justified?	No
(3) Whether the workman is entitled to reinstatement with full back wages?	No
(4) What order?	As per final order

ISSUES NO. 1 AND 2 :

(8) both these issues are interlinked. Thus, they are discussed and decided simultaneously. In this respect fact is not disputed that the workman herein had worked as a Sweeper. The fact is also not disputed that she was not appointed as a regular Sweeper and she was working on daily wages. However, according to the workman she was working on daily wages with the first party Bank from 16-9-1988. According to her, initially she was working at Saki Naka Branch and since 16-9-1991 she was working at Marol record room. She has claimed in para 3 of her statement of claim at Ex. 4 that, she was a full time Sweeper on daily wages for a long period. It is further contended in her statement of claim that initially she was getting Rs.1,800 per month and the amount was gradually increased to Rs.4,500 per month. According to her she has worked on daily wages since 1988 till Feb. 2005. Though her pleading was denied in the W.S. however, the concerned officer of the Bank Shri Hirachand Dharamshey in his affidavit Ex.25 says that he does not know whether the workman was

serving in the Bank since 1988 and he has no knowledge of the happenings prior to 2004. In short, the version of the workman is not denied in the evidence by the witness of first party. Thus conclusion can be arrived at that, the workman has proved that she has worked continuously since 1988 up to Feb. 2005 as Sweeper on daily wages. In short, it can be accepted that she has worked for more than 240 days a year continuously.

(9) In this respect the Ld. Advocate for the first party submitted that temporary employees working on daily basis can be discontinued at any time and such discontinuation of service neither can be called retrenchment nor dismissal from the services. Therefore, question of illegality in the termination of the services of the workman does not arise. In support of his argument the Ld. Advocate resorted to Apex Court ruling in Himanshu Kumar Vidyarthi v/s. State of Bihar AIR 1997 SC 3657(1). In this Spl. Leave Petition in respect of temporary daily wages the Hon'ble Apex Court observed that

"they are temporary employees working on daily wages. Under these circumstances their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of retrenchment cannot be stretched to an extent as to cover these employees. The Ld. Counsel for the Petitioners seeks to contend that in the High Court the Petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily wager employees and have no right to the post their disengagement is not arbitrary."

(10) In this respect the Ld. Advocate for the workman pointed out that this order is passed in SLP wherein facts are not clear. It is also not clear that whether the workers therein have completed 240 days continuous service in a calendar year. Therefore, Ld. Advocate for the second party submitted that the ratio laid down in the above order is not attracted to the set of facts of the present case.

(11) In this respect Ld. Advocate for the first party submitted that the workman herein was never appointed and her initial appointment was not as per the recruitment procedure. Therefore, Sec. 25-F of Industrial Disputes Act is not applicable while terminating her services. In support of his argument Ld. Advocate resorted to the Apex Court ruling in Rajasthan Tourism Development Corporation Ltd. v/s. Intejam Ali Zafri wherein the Hon'ble Court observed that

"it is the settled proposition of law that when the initial appointment itself is void then the provisions of Sec. 25-F of Industrial Disputes Act are not applicable while terminating the services of the workman."

(12) In this respect the Ld. Advocate for the second party submitted that in that case the workman had not

worked for 240 days continuously in one calendar year therefore Hon'ble Court held that Sec. 25-F is not attracted. In this respect the Ld. Advocate for the second party submitted that in the case at hand the workman herein was working with the first party since 1988 till 2005 continuously on daily wages. She had worked continuously for more than 240 days in a calendar year, therefore, she is entitled to be regularized in the service and her service cannot be terminated without following the procedure or she cannot be retrenched without following the procedure under Sec. 25-F of I.D. Act. In support of his argument the Ld. Advocate relied upon recent Apex Court ruling in Devinder Singh v/s. Municipal Council Sanaur 2011 (3) ALL MR 1008 (SC) wherein the Hon'ble Apex Court referred number of its earlier rulings and held that

"This Court has repeatedly held that the provisions contained in Sec. 25-F (a) and (b) are mandatory and termination of the service of a workman which amount to retrenchment within the meaning of Sec. 2(oo) without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void/ illegal/inoperative"

In the same judgment the Hon'ble Apex Court referred to its earlier judgment in L. Robert D'Souza v/s. Executive Engineer (1982) (I) SCC 645 wherein it was observed that

"Even a daily rated worker would be entitled to protection of Sec. 25-F of the Act if he had continuously worked for a period of one year or more."

(13) In the case at hand the workman was working on daily wages. She had worked since 1988 till 2005. She has worked more than a year. In the light of above Apex Court rulings it is clear that she was employee of the Bank and was entitled to the protection under Section 25-F of I.D. Act. Accordingly I decide the Issue No. 1 in the affirmative that the second party was employee of the first party Bank.

(14) In this case the first party has not followed the procedure laid under Sec. 25-F of I.D. Act, as discussed hereinabove. Therefore, I hold that the action of the first party terminating the services of the workman is not justified. Accordingly I decide the Issue No.2 in the negative.

ISSUES NO. 3 AND 4:

(15) The second party herein has prayed for the relief of reinstatement in the service with full back wages. In respect of reinstatement I would like to point out that, the workman was not appointed against clear vacancy and no recruitment procedure was followed while appointing or engaging her in service. Furthermore, the management has lost faith in her as they have made allegations that she has committed theft of books and documents of the bank. In the circumstances, instead of reinstatement I think it proper to award some compensation. In respect of back wages again I would like to point out that the second party workman was not working with the first party since Feb.

2005. In the circumstances, it would be unjust and improper to grant full back wages as has been claimed by the workman. The compensation would suffice the purpose. Accordingly, I decide this Issue No.3 in the negative. However, to meet the end of justice I think it proper to grant compensation to the tune of Rs.60,000 (Rupees sixty thousand) to the second party from the first party in lieu of reinstatement and back wages. Accordingly the Reference is partly allowed with no order as to costs.

ORDER

The Reference is partly allowed.

No order as to costs.

Date: 6th June, 2012

K. B. KATAKE, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2659.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सौजीआईटी/एलसी/आर/13/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/447/95-आई आर (बो-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2659.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/13/97) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 20-7-2012.

[No. L-12012/447/95-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/13/97

Presiding Officer : Shri Mohd. Shakir Hasan

Shri Ram Gopal,
S/o Shri Dulji,
Qr. No. 12/1,

Goma Ki fail,

Indore

... Workman

Versus

Branch Manager,
Bank of Baroda,
Navlakha Area Branch,
42, Khalsa Chamber,
Navlakha Main Road,
Indore

... Management

AWARD

Passed on this 25th day of June, 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-12012/447/95-IR(B-II) dated 3-1-97 has referred the following dispute for adjudication by this tribunal:—

“Whether the action of the management of Bank of Baroda, Regional office, Bhopal in terminating the service of Shri Ramgopal S/o Dhulji, Safai Karmchari, Navlakha Area Branch, Indore w.e.f. 13-1-1994 is legal and justified? If not, to what relief the workman is entitled?”

2. The case of the workman, in short, is that the workman Shri Ramgopal was appointed as class IVth employee on the post of Sweeper on contingency basis at Navlakha Branch, Indore in the management Bank in February, 1993. He was confirmed on the said post vide letter No. NAV/BR dated 5-6-1993 by the Branch Manager. He was terminated on 13-1-1994 without any sufficient reason orally from the service. He was not given any notice as required under the provision of Service Rules and against the principle of natural justice. He served legal notice on 13-1-94. It is submitted that the oral order of termination be set aside and the management be directed to pay all consequential benefits.

3. The management appeared and filed Written Statement to contest the reference. The case of the management, interalia, is that the alleged workman was never appointed by the Bank and therefore the question of applicability of the provision of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947) does not arise. Infact he was employed by the contractor namely M/s. Spick and Span and Anju Electrical who were awarded contract for upkeep and maintenance of the Bank's Branch at Navlakha area, Indore. He was employed for execution of work of the contractor. The bank never paid any amount to the alleged workman individually. The contractor used to pay the wages to the alleged workman. It is stated that the Bank decided to discontinue the contract with the contractor and the engagement of such contractor was ended. Another case of the management is that the person

who is engaged purely on temporary basis as a stop gap arrangement without following the proper procedure would not get the right to be appointed permanently. This was a contractual appointment and the contractual appointment of the nature comes within the exempted clause of Section 2(oo)(bb) of the Act, 1947. It is also stated that if the bank is directed to consider Shri Ramgopal who was not selected under the rules would get the benefit of being appointed to the post without the due qualification or without facing any competition from eligible candidates. It is submitted that the dispute be answered in favour of the management.

4. On the basis of the pleadings of the parties, the following issues are for adjudication—

I Whether the action of the management in terminating the service of Shri Ramgopal w.e.f. 13-1-1994 is legal and justified?

II. To what relief the workman is entitled?

5. Issue No. I

To prove the case, the workman has himself examined and has also adduced documentary evidence. The workman Shri Ramgopal has stated that he was terminated from service without any reason. In cross-examination, he has stated that he worked from February, 93 to 13-1-94. He was appointed and appointment letter was given. He has filed the said document in original which is marked as Exhibit W/I-A. The said document shows that it was a pass for entry into the Bank premises whereby it was directed to the police guard to allow the entrance of Ramgopal in morning and evening hours for cleaning. This letter cannot be termed as appointment letter. It is issued on 5-6-93 whereas there is a definite case that Shri Ramgopal was engaged from Feb, 1993. The letter shows that the cleaning employee was permitted into the Branch of the Bank. It does not mean that he was employee of the Bank and it is not an appointment letter. The name of Shri Ramgopal was not referred by the Employment Exchange nor he was medically examined before appointment. It is suggested to the alleged workman that he was engaged by the contractor. Thus his evidence is not sufficient to prove that he was employed by the Bank specially from Exhibit W/I-A which is not an appointment letter.

6. On the other hand, the management has adduced two witnesses and has filed photocopies of document. The management witness Shri Kesharimal Darda was Sr. Branch Manager. During the said period, he was working in the said Branch. He has stated that for the purpose of upkeep and maintenance of the bank premises at Navlakha Branch of the Bank, contract was given to M/s Spick and Span and M/s Anju Electricals and the contractor engaged the claimant Shri Ramgopal. He has stated that Bank never paid wages to the claimant individually. His evidence is unrebutted and the workman has not cross-

examined him and was discharged. His evidence clearly shows that he was employee of the contractor and was not of the Bank. There is no reason to disbelieve his evidence and it is unrebutted and he was in the Branch at the relevant time.

7. Another management witness Shri Mahesh Jain is presently working as Manager Operation. He has also corroborated the evidence of Shri Kesharimal Darda. He has also stated that Shri Ramgopal was employee of the contractor to whom contract was awarded for upkeep and maintenance of the Branch of the Bank. There is no cross-examination to this witness as well and he was discharged. There is no reason to disbelieve his evidence that Shri Ramgopal was employee of the contractor. This itself shows that there was no relationship of employer and employee between the management Bank and Shri Ramgopal. This shows that the action of the management is legal and justified. This issue is decided against the workman and in favour of the management.

8. Issue No. II

On the basis of the discussion made above, the workman is not entitled to any relief. Accordingly the reference is answered.

9. In the result, the award is passed without any order to costs.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour and Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2660.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 62/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-17012/49/1997-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2660.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2011) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 20-7-2012

[No. L-17012/49/1997-IR-(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX,
DELHI**

ID No. 62/2011

Sh.Rajesh Kumar Gupta
S/o Sh.Ram Kumar,
H.No.1/2502 Mot Ram Road,
Shahdara, Delhi-110032. ... Workman

Versus

The Sr. Divisional Manager,
LIC of India, D.O.-II, Jeevan Pragati,
Plot No.6, Distt. Central Luxmi Nagar,
New Delhi-110092. ... Management

AWARD

Life Insurance Corporation of India (Employment of Temporary Staff) Instructions, 1993 (hereinafter referred to as Temporary Staff Employment Scheme) was formulated by Life Insurance Corporation of India (hereinafter referred to as the Corporation) on 28th June, 1993 to employ temporary staff in class III and class IV posts. Temporary staff in class III posts could be engaged in situations : (i) permanent vacancy pending recruitment on regular basis, (ii) vacancies arising out of absence on maternity leave of a regular female or when regular employee proceeds on sick leave for a period exceeding one month, and (iii) adhoc vacancies sanctioned by the Zonal Manager to cope with the work of seasonal nature. In pursuance of Temporary Staff Employment Scheme, the claimant was engaged on 15-4-1996 as Assistant for a period of 85 days. His services came to end on 12-8-1996, on account of non-renewal of contract of employment. Feeling aggrieved by the said action of the Corporation, the claimant raised an industrial dispute before the Conciliation Officer. The Conciliation Officer opined that there was no scope for conciliation and submitted his failure report before the appropriate Government. The appropriate Government referred the dispute to this Tribunal, vide order No.L-17012/049/97-JR(B-II), New Delhi dated 16th June, 1998, with following terms:—

“Whether the offer of appointment given by LIC of India to workman Rajesh Kumar Gupta as temporary assistant, is inconformity with the provisions of law? If not, to what relief the workman is entitled?”

2. Subsequently vide order No. L-17012/049/97-JR(B-II), New Delhi dated 11-11-2005, a corrigendum was issued by the appropriate Government and terms of reference were modified/added as detailed below:—

“Whether the offer of appointment given by LIC of India to the workman as temporary assistant is inconformity with the provisions of law? If not, to what relief the workman is entitled?”

“Whether the termination of service of Shri Rajesh Kumar Gupta by the management of LIC of India is justified? If not, to what relief the workman is entitled?”

3. The claim statement filed in response to modified reference order, project that the corporation asked Employment Exchange, New Delhi, to sponsor names of eligible candidates of categories viz General/SC/ST and other backward classes etc. for appointment as Assistant in the Corporation. Name of the claimant was sponsored under general category. He was interviewed and selected by the Selection Committee and appointed as Assistant in the pay scale of Rs.1000 plus usual allowances as applicable to the Corporation. He was posted at branch unit-12-B, A-15, Mohan Cooperative Estate, Mathura Road, opposite Sarita Vihar, New Delhi. His services were always found satisfactory by his superiors. He rendered unblemished service and gained experience as an honest worker. All of a sudden, his services were orally terminated on 12-8-1996, without assigning any reason. Inspite of his repeated requests, termination order was not withdrawn. Demand notices dated 6-2-1997 and 26-2-1997 were served. Claim was filed before the Conciliation Officer but no settlement could arrive at. He claims that his services may be reinstated with continuity and full back wages, holding that offer of appointment given by the Corporation, was not in consonance with the provisions of law.

4. The Corporation demurred the claim pleading that Temporary Staff Employment Scheme was circulated by the Corporation vide circular No. ZD/793/ACP/93 on 28-6-1993, which scheme governs employment of temporary staff in class III and class IV posts. The scheme, so circulated by the Corporation, was valid, legal and in conformity with law. Corporation was competent to formulate the scheme. The claimant was employed vide letter dated 11-4-1996 for a fixed period. After expiry of the said period, his services were liable to be terminated. He was engaged purely on temporary basis, after creating adhoc vacancy for a particular period, in order to lessen work load created due to leave of regular staff, by the Recruitment Board. Termination of his service was as a result of non-renewal of contract of employment. No right accrued in favour of the claimant to seek his reinstatement and declaration to the effect that offer of appointment, given to him, was not in accordance with law.

5. Claimant entered the witness box to establish claim made in the claim statement. Ms. Jyoti Virmani deposed facts on behalf of the Corporation. No other witness was examined by either of the parties.

6. Vide order No.Z-22019-6/2007-IR(C-II) dated 11-2-2008, the case was transferred to the Central Govt. Industrial Tribunal No.2, New Delhi, for adjudication. It was re-transferred to this Tribunal, vide order No.Z-22019-6/2007-IR(C-II) New Delhi, dated 30-3-2011, for adjudication.

7. The claimant tendered written arguments. Shri S.R. Bhardwaj, authorised representative, advanced oral arguments and also submitted written submissions on behalf of the Corporation. Have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :—

8. In his affidavit Ex.WW-I/A, tendered as evidence, the claimant swears that the Corporation requested Employment Exchange, Daryaganj, Delhi, to sponsor names of eligible candidates of all categories. He was interviewed and selected by the Selection Committee. He was posted at branch unit 12-B, A-15, Mohan Cooperative Society, Mathura Road, opposite Sarita Vihar, New Delhi. His services were found to be satisfactory. He rendered unblemished service throughout. His services were terminated on 12-8-1996 orally, without assigning any reason. Inspite of his request, he was not allowed by the Corporation to resume his duties. Demand notices dated 6-2-1997 and 26-2-1997 were sent, but to no avail. During the course of his cross- examination, he concedes that he was appointed for a period of 85 days. He further states that he read and understood contents of appointment letter, which is Ex.WW-I/M1.

9. Ms. Jyoti Virmani swears in her affidavit Ex.MW-1/A, tendered as evidence, that vacancies for specific period were created by the Corporation to clear back log of work load accumulated on account of female employees being on maternity leave, on account of regular employees being on leave and on account of fact that recruitment of regular staff through selection committee was to take considerable time. The Corporation formulated Temporary Staff Employees Scheme in compliance with the order of the Apex Court passed in Piare Singh [JT 1992 (5) 179]. The claimant was appointed purely on temporary basis for a fixed period, against adhoc vacancy. His services automatically came to an end, on expiry of period of his employment. During the course of her cross-examination, she concedes that the name of the claimant was sponsored by the Employment Exchange along with other candidates. He was interviewed for temporary post for fixed period. Initially he worked for 85 days. Thereafter he worked for 35 more days. Thus he worked in all for 120 days. Temporary Assistants like claimant were not given permanent status by the Corporation at any point of time. There is no vacant post/vacancy for permanent post in the Corporation. No recruitments are made for last many years to permanent posts.

10. When facts unfolded by the claimant and Ms. Virmani are appreciated, it came to light that Temporary Staff Employment Scheme was formulated by the Corporation. In consonance with the scheme, the Corporation employed temporary staff in class III posts in following situations :—

- (i) Due to pendency of recruitment of staff on regular basis, against permanent vacancies.
- (ii) Vacancies arising out of absence of maternity leave of regular female employee or when regular employee proceeds on medical leave for a period exceeding one month; and
- (iii) Adhoc vacancies sanctioned, by the Zonal Manager, to cope up with the work of seasonal nature.

11. It is an admitted proposition that name of the claimant was sponsored by the Employment Exchange. Claimant was interviewed and selected for the post of Assistant. He was offered appointment for 85 days as temporary assistant vide letter dated 11-4-1996, which is Ex.WW-I/M-1. Extension of 35 days was given to the claimant. His services came to an end on 12-8-1996.

12. Terms of employment, which governs conditions of service of the claimant, are detailed in Ex.WW1/M1. It is specifically mentioned therein that employment of the claimant shall be effective for a period of 85 days from 15-4-1996 to 8-7-1996. It is also mentioned therein that his engagement was completely on temporary basis. Paragraph three of the said letter reiterates that his employment was on completely temporary basis and his services would come to an end, on expiry of period, referred above. It has further been stipulated that his services can be terminated without assigning any reason during the aforesaid period. It was, also stipulated that during the period of his temporary employment no provisions of Life Insurance Corporation (Employees) Regulation shall be applicable to him and he would not be entitled to any benefit, under those regulations, stipulates paragraph four of the said letter. He was not eligible to be absorbed in services of the Corporation on the basis of his temporary employment, declares paragraph six of the said letter. Tone and tenor of terms of employment, detailed in Ex.WW-1/M-1, make it clear that the claimant was made known that offer of appointment was purely temporary for a period of 85 days, which appointment was liable to come to an end, on expiry of the said period. His temporary employment was not to accrue any right in his favour for regularisation/absorption in services of the Corporation. Even otherwise a right was reserved by the Corporation to terminate services of the claimant for any reason whatsoever during currency of the temporary period of employment. The claimant accepted terms of his employment, referred above, and joined services of the Corporation.

13. Extension of period of 35 days was given to the claimant. Thereafter no further extension was given and his services came to an end on 12-8-2006. Whether non-renewal of contract of employment of the claimant would amount to retrenchment. For an answer definition of word "retrenchment" given in clause (oo) of section 2 of the

Industrial Disputes Act, 1947 (in short the Act) needs consideration. For sake of convenience, the said definition is as extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

13. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

14. Sub Clause (bb) purports to exclude from the ambit of the definition of retrenchment (i) termination of the service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned, on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman as a result of "non-renewal of the contract of employment" between the employer and the workman concerned on its expiry. Thus "non-renewal of contract of employment" pre-supposes an

existing contract of employment, which is not renewed. When services of an employee is terminated on account of non-renewal of contract of employment, between the employer and the workman, it does not amount to retrenchment. The second part refers to "such contract" being terminated under a stipulation in that behalf contained therein. The cases contemplated, under this part too, would not amount to retrenchment. However this sub-clause, being in the nature of an exception to clause (oo) of section 2 of the Act, is ruled to be construed strictly when contractual agreement is used as modus operandi to frustrate claim of the employee to become regular or permanent against a job. The adjudicator has to address himself to the question whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of retrenchment. See Shaileendra Nath Shukla (1987 Lab. I.C, 1607), Dilip Hanumantrao Shrike (1990 Lab. I.C, 100) and Balbir Singh [1990 (1) LLJ. 443].

15. On review of law laid by the Apex Court and various High Courts, a single Judge of the Madhya Pradesh High Court, in Madhya Pradesh Bank Karamchari Sangh (1996 Lab. I.C. 1161) has laid following principles of interpretation and application of sub-clause (bb) of clause (oo) of section 2 of the Act:

- "(i) that the provisions of section 2(oo)(bb) are to be construed benevolently in favour of the workman,
- (ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under section 2(oo)(bb),
- (iii) that the provisions of section 2 (oo)(bb) are not to be interpreted in the manner which may stifle the main provision,
- (iv) that if the workman continues in service, the non-renewal of the contract can be deemed as mala fide and it may amount to be a fraud on statute;
- (v) that there would be wrong presumption of non-applicability of section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end".

16. Whether provisions of retrenchment, enacted in the Act, provide for any security of tenure? Answer lies in negative. Provisions of retrenchment provide for certain benefits to a workman in case of termination of his service, falling within the ambit of definition of retrenchment. On

compliance of the requirements of Section 25F or 25N and 25G of the Act, it is open to the employer to retrench a workman.

17. Termination of service of an employee during the period of probation was held to be covered by the exception contained in sub-clause (bb) of section 2(oo) of the Act, in C.M. Venugopal [1994 (1) LLJ 597]. As per fact of the case, Regulation 14 of the Life Insurance Corporation of India (Staff) Regulation, 1962 empowered the Corporation to terminate the service of an employee within the period of probation. The employee was put on probation for a period of one year, which was extended by another year. Since he could not achieve the target to earn confirmation, his service was terminated in terms of Regulation 14 as well as order of appointment. The Apex Court ruled that the case was covered by the exception contained in sub-clause (bb), hence it was not retrenchment.

18. In Morinda Co-operative Sugar Mills Ltd. (1996 Lab. I.C. 221) a sugar factory used to employ certain number of workmen during crushing season and at the end to the crushing season their employment used to cease. The Supreme Court held that despite the fact that the workmen worked for more than 240 days in a year, cessation of their employment at the end of crushing season would not amount to retrenchment in view of the provisions of sub-clause (bb) of section 2(oo) of the Act. It was observed as follows:

"4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.

5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in sub-clause (bb) of section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated herein before and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work".

19. Above legal position was reiterated by the Apex Court in Anil Bapuro Kanase [1997 (10) S.C.C. 599] wherein it was noted as follows:

"3. The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28-3-1995 in Writ Petition No. 488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In Morinda Coop. Sugar Mills Ltd. v. Ram Kishan in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing, in para 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per sub-clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above".

20. In Harmohinder Singh [2001 (5) S.C.C. 540] an employee was appointed as a salesman by kharga canteen on 1-6-74 and subsequently as a cashier on 9-8-75. The letter of appointment and Standing Orders, inter alia, provided that his service could be terminated by one month's notice by either party. He was served with a notice to the effect that his service would be relinquished with effect from 30-6-1989. Relying precedent in Uptron India Ltd. [1998 (6) S.C.C. 538] the Apex Court ruled that contract of service for a fixed term are excluded from the ambit of retrenchment. Decision in Balbir Singh (supra) was held to be erroneous. It was also ruled that principles of natural justice are not

applicable where termination takes place on expiry of contract of service.

21. In *Batala Coop. Sugar Mills Ltd.* [2005 (8) S.C.C. 481] an employee was engaged on casual basis on daily wages for specific work and for a specific period. He was engaged on 1-4-1986 and worked upto 12-2-94. The Labour Court concluded that termination of his services was violative of provisions of Section 25-F of the Act, hence ordered for his reinstatement with 50% back wages. Relying precedents in *Morinda Coop. Sugar Mills* (*supra*) and *Anil Bapuro Kanase* (*supra*) the Apex Court ruled that since his engagement was for a specific period and specific work, relief granted to him by the Labour Court cannot be maintained.

22. The Apex Court dealt with such a situation again in *Darbara Singh* (2006 LLR 68) wherein an employee was appointed by the Punjab State Electricity Board as peon on daily wage basis from 8-1-88 to 29-2-88. His services were extend from time to time and finally dispensed with in June, 1989. The Supreme Court ruled that engagement of Darbara Singh was for a specific period and conditional. His termination did not amount to retrenchment. His case was found to be covered under exception contained in sub-clause (bb) of Section 2(oo) of the Act. In *Kishore Chand Samal* (2006 LLR 65), same view was maintained by the Apex Court. It was ruled therein that the precedent in *S.M. Nilajkar* [2003 (II) LLJ 359] has no application to the controversy since it was ruled therein that mere mention about the engagement being temporary without indication of any period attracts Section 25 F of the Act if it is proved that the concerned workman had worked continuously for more than 240 days. Case of *Darbara Singh* and *Kishore Chand Samal* were found to be relating to fixed term of appointment.

23. In *BSES Yamuna Power Ltd.* (2006 LLR 1144) *Rakesh Kumar* was appointed as Copyist on 29-9-89, initially for a period of three months as a daily wager. His term of appointment was extended up to 20-9-90. No further extension was given and his services were dispensed with on 20-9-90. On consideration of facts and law High Court of Delhi has observed thus :

“... In the present case, the respondent was appointed as a copyist for totaling the accounts of ledger for the year 1986-87 and then for 1987-88. His initial appointment was for the period of three months. It was extended from time to time and no extension was given after 20th September, 1990. He was appointed without any regular process of appointment, purely casual and on temporary basis for specific work of

totaling of ledger. When this work was over, no extension was given. I consider that appointment as that of the respondent is squarely covered under Section 2(oo)(bb) of the Act. Giving of non-extension did not amount to termination of service, it was not a case of retrenchment”.

24. Precedents, handed down by Allahabad High Court in *Shailendra Nath Shukla* (*supra*), Bombay High Court in *Dilip Hanumantrao Shirke* (*supra*), Punjab & Haryana High Court in *Balbir Singh* (*supra*) and Madhya Pradesh High Court in *Madhya Pradesh Bank Karamchari Sangh* (*supra*) castrate sub-clause (bb) of Section 2(oo) of the Act. Ratio decidendi in these precedents abrogates statutory provisions of sub-clause (bb) of Section 2 (oo) of the Act without even discussing the legality or constitutional validity of the clause. On the other hand the Apex Court in *C.M. Venugopal* (*supra*), *Morinda Co-operative Sugar Mills Ltd.* (*supra*), *Anil Bapurao Kanase* (*supra*), *Harmohinder Singh* (*supra*), *Batala Coop. Sugar Mills Ltd.* (*supra*), *Darbara Singh* (*supra*) and *Kishore Chand Samal* (*supra*) and High Court of Delhi in *BSES Yamuna Power Ltd.* (*supra*) spoke that case of an employee, appointed for a specific period which was extended from time to time, would be covered by the exception contained in sub-clause (bb) of Section 2(oo) of the Act, in case his services are dispensed with as a result of non-renewal of the contract of employment between him and his employer, on its expiry or termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The law, so laid, holds the water and would be applied to the case of the claimant.

25. As admitted by the claimant, his services came to an end on 12-8-1996 when Corporation opted not to extend his term of employment. Ex. WW-1/M-1 stipulates that the claimant was appointed for a specific period, purely on temporary basis. It is also contained therein that the Corporation may terminate services of the claimant even during pendency of his term of employment, without assigning any reason in respect of termination of his services, during currency of his temporary employment. Corporation waited till expiry of his period of employment and opted not to renew his contract of employment. Therefore, termination of services of the claimant was the result of non-renewal of contract of employment. Such an act does not amount to retrenchment. When services of the claimant were not retrenched, he is not entitled to benefits of the provision of Section 25G and 25H of the Act.

26. Thrust of the contention of the claimant has been that offer of appointment for a specific period was in

violation of the rules of recruitment. However, the claimant has not been able to show that process of regular recruitment was adopted by the Corporation. The corporation proceeded ahead to employ claimant under Temporary Staff Employment Scheme. The claimant could not question the scheme formulated by the Corporation. For consideration of aspects of social justice, the Tribunal has to keep in mind that the Act is a beneficiary legislation calculated to ensure social justice to both employers and employees and advance progress of industry by bringing harmony and cordial relationship between the parties. The Act empowers adjudicating authorities to abrogate conditions in contract of employment, in the interest of social justice. Social and economic justice is ultimate ideal of industrial adjudication. Social and economic justice has been given place of pride in our constitution and doctrine of absolute freedom of contract has thus to yield to the higher claims for social justice. See Raibahadur Deewan Badri Das [1962 (II) LLJ 366].

27. Social justice is not based on contractual relations and is not to be enforced on principles of contract of service. It is something outside these principles and invoked to do justice without a contract to back out. Reference can be made to precedent in Rashtriya Mill Mazdoor Sangh [1960 (II) LLJ 263]. In J.K. Cotton Spinning & Weaving Mills Company Ltd. [1963 (II) LLJ 435] the Apex Court ruled that industrial disputes are to be adjudicated based on the concept of social justice. It would be expedient to reproduce the observations made by the Apex Court which are extracted.

“In our opinion the argument that the considerations of social justice are irrelevant and untenable in dealing with industrial disputes, has to be rejected without any hesitation. The development of industrial law during the last decade and several decisions of this court in dealing with industrial matters have emphasised the relevance, validity and significance of doctrine of social justice Indeed the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claim of social justice in dealing with industrial disputes. The concept of social justice is not narrow or one sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic idea of socio economic equality and its aim is to assist the removal of socio economic disparities and inequalities.”

28. In Ahmedabad Manufacturing and Calico Printing Company Ltd. [1972 (II) LLJ 165] the above principles were reiterated by the Apex Court. Therefore, the law laid down by Apex Court makes it clear that the industrial adjudication cannot and should not ignore the claims of social justice. Same views were expressed in Basti Sagar Mills Company Ltd. [1978 (II) LLJ 412]. Therefore this Tribunal has to consider the case on the touch stone of social justice also.

29. The claimant wants that offer of appointment for a period of 85 days may be substituted as an offer of appointment on regular post. The terms and conditions of contract between the employer and employee can be interfered by this Tribunal only when it is found necessary in exigencies of the situation. The Tribunal cannot indiscriminately interfere with the contracts. This discretion, to interfere with the contract contained in Ex. W.W-1/M-1, has to be based with the requirements of social justice. Alas! the claimant has not been able to put forward any fact which may tilt scale of social justice in his favour. As projected by Ms. Virmani, appointment, purely on temporary basis, was given to the claimant since vacancies for specific period were created to clear backlog of workload accumulated on account of regular employees being on leave and also because recruitment of regular staff through selection process was to take considerable long time. The claimant could not raise eyebrows on facts, so testified by Ms. Virmani. The situation/exigencies unfolded by Ms. Virmani led the Corporation to formulate Temporary Staff Employment Scheme. Under that scheme the claimant was engaged for a specific period. When vacancy was created to clear backlog created on account of regular employee being on leave, this Tribunal cannot adventure to substitute contract of employment, entered in between the parties, using social justice principles. I do not find any case to substitute the terms of contract, entered into between the parties. No case is, therefore, made out in favour of the claimant.

30. In view of the above reasons, the claim put forward is to be brushed aside. In his written arguments the claimants projected certain facts, which were beyond the evidence adduced in the matter. Those facts cannot espouse his cause. Claim is, accordingly, brushed aside. An award is passed in favor of the Corporation and against the claimant. It be sent to the appropriate Government for publication.

Dated : 11-5-2012

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 23 जुलाई, 2012

का.आ. 2661.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय-1, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-1/66 ऑफ 2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/159/2003-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd July, 2012

S.O. 2661.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-1/66 of 2003) of the Central Government Industrial Tribunal-Labour Court-1, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workmen, which was received by the Central Government on 20-7-2012.

[No. L-12012/159/2003-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present :

JUSTICE G. S. SARRAF, Presiding Officer

REFERENCE NO.CGIT-1/66 OF 2003

Parties:

Employers in relation to the management of
Syndicate Bank

And

Their workman (Smt.Shantabai Ramanlal Pawar)

Appearances :

For the Management : Shri R.N.Shah, Adv.

For the Workman : Shri Vijay Kumar, Adv.

State : Maharashtra

Mumbai, dated the 3rd day of July, 2012

AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the

Industrial Disputes Act, 1947 (hereinafter referred to as the Act.). The terms of reference given in the schedule are as follows:

“Whether the action of the management of Syndicate Bank, Jogeshwari Branch, Mumbai, in terminating the services of Smt.Shantabai Ramanlal Pawar (Ex-part time permanent Sweeper) w.e.f.3-5-2002 is legal and justified? If not, what relief is concerned workman entitled to?”

2. According to the statement of claim filed by the workman Shantabai Ramanlal Pawar she joined the services of the Syndicate Bank (hereinafter referred to as the Bank) in the year 1990. She worked as a part time ‘badly sweeper’ in the Bank in place of Anant K.Pawar during 1990-1993. However on 9-11-1993 she was appointed as permanent part-time sweeper and from that day she attended her duties regularly. Her name was entered into the muster for permanent employees maintained by the Bank. She used to sign the muster every day. Apart from the regular work of sweeper she was allotted the work of attendant if any of them was not present in the Bank. She was also sent for recovery of money and she used to attend various duties and miscellaneous work. She worked for full day on regular basis. She worked sincerely and faithfully for more than ten years. Her last drawn monthly salary was about Rs. 3,000. She was on leave on some days in February 2002 and from 1-4-2002 to 2-5-2002 due to arthritis. She informed the Bank Manager about her illness. However, when she came to resume her duty with a fitness certificate on 3-5-2002 the Senior Branch Manager orally and illegally terminated her services. She visited the Bank on 30-8-2002 to operate her savings account. The newly appointed sweeper Ganga and Sub-Manager Vimala abused and assaulted her and threatened her regarding which she lodged a complaint at the Oshiwara Police Station, Mumbai. She was neither given any show cause notice nor any charge sheet by the Bank. No enquiry was conducted against her. The Bank violated the principles of natural justice while illegally terminating her. The action of the Bank is illegal malafide, unjust, improper and it amounts to unfair labour practice. There is gross violation of Section 25-F of the Act. She has, therefore, prayed that she be reinstated with full back wages, continuity of service and all other consequential benefits from 3-5-2002.

3. According to the written statement filed by the Bank the workman was neither a full time nor a part-time sweeper and she was temporarily doing the job of scavenger on piecemeal basis as a casual employee. She was paid on the basis of the number of urinals/W.C's/wash basins cleaned by her. She used to take half to one hour per day for cleaning those items at the Jogeshwari Branch. She was not allotted the work of attendant and she was not sent for recovery of money by the Bank. It is also wrong to say that the workman used to attend various

duties and miscellaneous work of the Bank. The Bank has denied that the workman worked for more than ten years and has said that she worked temporarily for some time. The workman disappeared and did not turn up for 5-6 months. She neither sought prior permission nor she informed the Bank about her inability to do the work. The Bank could not keep the toilets/urinals/wash basins uncleared and, therefore, it entrusted the work to other available person. The workman was not in the employment of the Bank and, therefore, there was no need to conduct any enquiry or issue any chargesheet against her. It is not true to say that newly appointed sweeper Ganga and Sub-Manager Vimla abused, assaulted and threatened the workman. The Bank believes that the matter was dropped by the police. According to the written statement as per para 16.9 of Desai Award persons who are casual employees or who are employed to do the job work are excluded from the operation of this Award and they are not covered under any Award or Settlement. It has also been stated in the written statement that during the period of her absence the workman was busy in contesting municipal election. She contested election from Ward No. 118 as independent candidate and lost. The Bank has prayed that the reference be rejected.

4. The workman has filed her affidavit and she has been cross-examined by learned counsel for the Bank. The Bank has filed affidavits of Vimla M.Kamath and Anand K.Pawar. While A.K.Pawar has been cross-examined by learned counsel for the workman the cross-examination of Vimla M.Kamath has been closed by order sheet dt.19-9-2011.

5. Heard Shri Vijay Kumar learned counsel for the workman and Shri R.N.Shah learned counsel for the Bank.

6. In para no.5 of the statement of claim the workman states that she was on leave on some days in February 2002 and thereafter she was on leave from 1-4-2002 to 2.5.2002. She further states that when she reported for duty on 3.5.2002 the Branch Manager did not allow her to join. On the contrary in her cross-examination she clearly and emphatically says "I worked last up to 30-5-2000." The story of the workman becomes doubtful due to these contradictory assertions. A person has to be in continuous service for not less than one year under Section 25-F of the Act and this has to be counted starting from the date of termination and then counting 12 months backwards. The fact that the workman had worked continuously for 240 days or more in the year immediately preceding termination is to be proved by the workman and not the employer. In this case the date of termination is not clear and there is no evidence on record to show that the workman was in continuous service of the Bank for 240 days counting backwards from the date of her termination. There is thus no infringement of the provisions of Section 25-F of the Act.

7. The workman Shantabai has stated in her cross-examination

"No appointment letter was issued to me. My work was to clean bathrooms including basins, latrine seats, urinals. Payment was made to me as per the rates fixed for cleaning per urinals and wash basins and bathrooms per item..... There was no fixed wages per month. I was receiving different amount according to work. I used to go at 7.00 a.m. It takes about 2 hrs. for cleaning..... I was paid Rs. 40 per urinal p.m., Rs. 75 per toilet p.m., Rs. 60 per wash basin p.m. and Rs. 100 p.m. for watering plants."

She has further stated

"My name was published in the Government Gazette for municipal election in 2002 but I did not contest for want of ticket. I did not withdraw my candidature. I received about 550 votes in the election."

She has further stated

"I had made a police complaint in Oshiwara Police Station. Police investigated into the matter but it was ultimately dropped. It is true that I am the member of Mohalla Committee of Oshiwara Police Station."

8. A careful perusal of the cross examination of the workman herself shows that there is no employee-employer relationship between her and the Bank and she was employed on contract basis for cleaning the W.Cs, urinals and bathrooms of the Bank. Even assuming that the workman had worked for 240 days continuously she cannot claim continuity of her service because her services were purely contractual. The termination of the contract does not amount to retrenchment and, therefore, it does not attract the provisions of Section 25-F of the Act.

9. For the reasons stated above I am of the opinion that the termination of the workman cannot be said to be illegal or unjustified.

The workman is not entitled to any relief.

Award is passed accordingly.

JUSTICE G. S. SARAF, Presiding Officer

नई दिल्ली, 24 जुलाई, 2012

का.आ. 2662.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय रिजर्व बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 03/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/143/2006-आई आर (बी-1) |
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 24th July, 2012

S.O. 2662.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2007) of the Central Government Industrial Tribunal-Cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Reserve Bank of India and their workmen, which was received by the Central Government on 24-7-2012.

[No. L-12012/143/2006-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/03/2007 Date: 10-07-2012

Party No. 1

The Regional Director,
Reserve Bank of India,
6, Sansad Marg,
New Delhi

VERSUS

Party No. 2

Shri Ganesh Keshavrao Barapatre
215, Anand Bhawan,
Nandanwan, Main Road,
Nagpur. (MS)

AWARD

(Dated: 10th July, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Reserve Bank of India and their workman, Shri Ganesh Barapatre, for adjudication, as per letter No.L-12012/143/2006-IR (B-I) dated 31-01-2007, with the following schedule:—

"Whether the action of the management of Reserve Bank of India in imposing the punishment of dismissal from services of Shri Ganesh Keshavrao Barapatre, Typist w.e.f. 16-07-2003 is legal & justified? If not, to what relief is the workman entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Ganesh Barapatre, ("the workman" in short), filed the statement of claim and the management of Reserve Bank of India, ("Party No. 1" in short) filed its written statement.

The case of the workman is that he was suffering from mental disease and his case was referred to Dr. Ram Manohar Lohiya Hospital, Delhi and he was registered as a patient and his registration no. was PSY /1392 of 2000 and this fact was within the knowledge of party no. 1 and during the period from 11-05-2002 to 31-07-2002, he could not attend his duties owing to his illness and he submitted the application dated 04-06-2002, for grant of leave from 11-05-2002 to 10-06-2002, but as he was not fit to resume his duties on 11-6-2002, he sent another application dated 20-07-2002, for leave from 11-06-2002 to 31-07-2002 and both the applications were duly received by the party no. 1. The further case of the party no. 1 is that thereafter also, he continued to be sick and could not able to attend his duties and his condition was very bad and as such, he could not even send application for extension of leave and due to his disease, he had no control over his thinking process and he could not actually understand what he should do in the given circumstances and due to said reason, he failed to apply for extension of leave and the party no. 1 served a charge sheet dated 09-01-2003 upon him, leveling allegation of his remaining absent from duties without prior permission of the competent authority and without proper medical certificate and thereby violated Rule 39 of the Reserve Bank of India (Staff) Rules 1948 and he was directed to submit his explanation either orally or in writing within 10 days, but owing to his mental problem, he could not submit any explanation and a departmental enquiry was instituted against him and an enquiry officer was appointed by order dated 10-02-2003 and the enquiry officer fixed the enquiry on 18-02-2003 and the enquiry was conducted in utter disregard to the settled principles of natural justice and was hastily concluded on 20-03-2003 and no proper opportunity of hearing was given to him and the enquiry officer submitted his report on 29-03-2003, holding him guilty and the party no. 1 issued show cause notice on 27-05-2003, proposing to dismiss him from services and directed him to submit his objection within a period of 10 days against the proposed punishment and on 16-07-2003, the punishment of dismissal from services was passed against him with a direction to treat the period from 11-05-2002 to 16-07-2003 as extra ordinary leave not to be reckoned for increments and qualifying service and pension and as such, he raised the dispute before the ALC, Nagpur and due to failure of the conciliation, failure report was submitted to the Central Government and hence this reference. It is further pleaded by the workman that due to his mental disease, he accepted the allegations leveled against him, without understanding the gravity and consequences of such acceptance and the enquiry was conducted without a defence assistance, as a result of which, he could not able to defend his case properly and documents on which reliance was placed by the party no. 1 were not provided to him and the punishment imposed against him is harsh and he should be examined by the medical board and if found unfit, then

he be allowed to retire voluntarily from the services on the ground of sickness.

3. The party no.1 in their written statement have pleaded inter alia that the Reserve Bank of India is a body corporate constituted under Section 3 of the Reserve Bank of India Act, 1934 and in terms of Regulation 32 of the Staff Regulations, every employee of the Bank shall confirm to and abide by the Staff Regulations and shall observe, comply with and obey all orders and directions, which may from time to time be given and in terms of Regulation 39, an employee shall not absent himself from duties without having first obtain the permission of the competent authority, nor shall he absent himself in case of sickness or accident without submitting a sufficient medical certificate and in terms of Regulation 77, leave cannot be claimed as a right. The further case of the party no. 1 is that the workman, who was working as a typist remained continuously absent from his duties from 11-05-2002 and submitted leave applications on 04-06-2002 and 20-07-2002, for the period from 11-05-2002 to 10-06-2002 and 11-06-2002 to 31-07-2002 respectively, stating the purpose of leave as (due to illness / not feeling well) and vide their letter dated 16-08-2002, the workman was advised to submit his leave applications along with medical certificate issued by the attending doctor and to present himself before the Bank's medical officer, but he failed to do so and the workman was again advised by them on 19-09-2002, to present himself before the Bank's medical officer on 27-09-2002, but the workman did not follow the instructions and continued to remain absent and he also did not submit any leave application from 01-08-2002, as such, he was issued with the charge sheet dated 09-01-2003, for violating the provisions of Regulation 39, for remaining absent from duty unauthorisedly without prior permission of the competent authority and without any proper medical certificate and an enquiry was conducted in terms of sub-Regulation 3 of Regulation 47 of the Reserve Bank of India (Staff) Regulations, 1948 and during the domestic enquiry, on 21-02-2003 the workman submitted to produce his medical certificate on the next date of hearing, but he did not do so and on completion of the enquiry, the enquiry officer submitted his report on 29-03-2003, holding the charges to have been proved against the workman and a copy of the enquiry report was sent to the workman by registered post for his representation, if any, against the findings of the enquiry officer and though the workman received the said letter, he did not file any representation and the competent authority vide his findings dated 27-05-2003 agreed with the conclusions of the enquiry officer and proposed to impose the penalty of dismissal from services and accordingly, a show cause notice was issued to the workman vide letter dated 27-05-2003, for making representation, if any, against the proposed penalty and the show cause notice issued by hand was

received by the workman on 26-06-2003, but as the workman did not submit any representation, the competent authority passed the final order dated 16-07-2003, dismissing the workman from services w.e.f. 16-07-2003 and the workman did not prefer any appeal against the order to the appellate authority. It is also pleaded by the party no. 1 that this Tribunal has no jurisdiction to decide the reference as the workman was working at New Delhi, when he was dismissed from services and the dispute is not an industrial dispute and no document showing the illness of the workman was filed and the findings of the enquiry officer are not perverse and the workman admitted the charges leveled against him and the enquiry was not conducted under undue haste and the workman was given opportunity to appoint a defence representative and the witness was examined in presence of the workman and he was also allowed to cross-examine him and the workman was given opportunity to present his witness and documents in his defence and the punishment is not shockingly disproportionate and the workman is not entitled for any relief.

4. As this is a case of dismissal of the workman from services, after holding a departmental enquiry, the validity of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 15-02-2012, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

At this juncture, it is necessary to mention here that though the examination-in-chief of two witnesses, namely H.S. Verma and Vijay Kumar Kaushik on affidavit, in support of the validity and fairness of the departmental enquiry, were filed by party no. 1, only one witness, namely, Vijay Kumar Kaushik in support of the claim. However, while passing the order on the validity of the enquiry on 15-02-2012, inadvertently, it was mentioned that, "one H.S. Verma was examined as a witness on behalf of the party no. 1" instead of "Vijay Kumar Kaushik". Hence, the name of the witness examined on behalf of party no. 1 be read as "Vijay Kumar Kaushik" instead of "H.S. Verma" in the order dated 15-02-2012.

5. At the time of argument, it was submitted by the learned advocate for the workman that the findings of the enquiry officer are perverse and against the provisions of the Persons with Disabilities (Equal opportunities, Protection of rights and Full participation) Act, 1995 and since the findings are perverse, the punishment given on the basis of such perverse findings is also excessive and not commensurate with the alleged misconduct. It was further submitted by the learned advocate for the workman that the management of Reserve Bank of India was aware of the fact that the workman was suffering from some mental disease, which is clear from letter no. CGMS/3745/8.2.00/1996-97 dated

07-02-1997 written by the Asstt. General Manager (Personnel) to the workman and this was identified by Bank's Medical Officer, hence to issue charge sheet against a person suffering from mental disease is itself a violation of natural justice, because such a person is not capable of knowing what is being done and to defend himself for such action and the action of the workman in not engaging a defence assistant and during the enquiry, simply saying that he was sick without reference to disease clearly established that he was not behaving normally and the management should have referred him for medical examination to ascertain the nature of the problem faced by the workman and the certificate issued from Dr. Ram Manohar Lohia Hospital, New Delhi shows that the workman was suffering from Schizophrenia and any departmental action against such person is violative of the Act, 1995 and the punishment given on the basis of such findings is not only illegal and arbitrary, but also, violative of the Act of 1995 and the punishment imposed is not commensurate with the alleged misconduct, because to remain on leave due to mental illness is not a serious misconduct and to dismiss the workman from service, who had rendered 24 years of service, only for the alleged misconduct of remaining on leave is excessive and as such, the workman is entitled for the relief as claimed.

6. Per Contra, it was submitted by the management representative that the workman was appointed as a Typist and he remained continuously absent from his duties from 11-05-2002 and the workman had submitted two leave applications, one on 04-06-2002 and the other on 11-06-2002, for leave for the period from 11-05-2002 to 10-06-2002 and 11-06-2002 to 31-07-2002 respectively, on account of his illness and the workman vide Bank's letter dated 16-08-2002 was asked to submit his leave application with medical certificate issued by the attending medical Officer and to present himself before the Bank's Medical Officer on 22-8-2002, but the workman neither submitted any leave application alongwith medical certificate nor reported before the medical officer of the bank, so he was again advised by the Bank on 19-09-2002 to present himself before the medical officer of the Bank on 27-09-2002, but the workman did not follow the instruction issued by the Bank and continued to remain absent from his duty without any satisfactory reason and proper medical certificates and from 01-08-2002, the workman did not submit any leave application, so the charge sheet dated 09-01-2003 was issued against the workman for violation of provisions of Regulation 39 of the Reserve Bank of India (Staff) Regulations, 1948 and a departmental enquiry was conducted against him. It was further submitted that by order dated 15-02-2012, the departmental enquiry conducted against the workman has already been held to be proper and in accordance with the principles of natural justice by the Tribunal and the workman did not make any representation against the findings of the enquiry officer,

though he received the copy of the same sent to him by the Bank by registered post and though the workman was served with the show cause notice to show cause against the proposed penalty, he did not file any show cause and the workman was given ample opportunities to produce medical certificates or to present himself before the Bank's Medical Officer for his medical examination but he failed to produce the medical certificates and he also did not appear before the Bank's Medical Officer for his medical checkup and the workman admitted about his remaining absent from duty without submission of any application and though he was given opportunity to produce the medical certificates in support of his illness, he did not produce the same and the documents filed by the workman regarding his treatment at Dr. Ram Manohar Lohiya Hospital are in respect of the period much earlier to the issuance of the charge sheet dated 09-01-2003 and the said documents were never brought to the notice of the Bank and the workman in his evidence has admitted that he was not under medical treatment for his illness including mental illness from 11-05-2002 and the workman was regularly attending duty in the Bank from 08-04-2001 to 10-05-2002. It was further submitted by the management representative that the case of the workman is not covered under the provisions of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 as the workman did not submit the disability certificate as required and mentioned under section 2(t) of the said Act and issued by the competent authorities under rule 4 of the persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Rules, 1996 and the Bank has not violated any provision of the said Act and the workman did not disclose about his suffering from mental illness during the enquiry and the burden of proof as regard his mental status was on the workman and he failed to prove the same and the findings of the enquiry officer are not at all perverse and the punishment imposed against the workman cannot be said to be shockingly disproportionate and therefore, there is no scope to interfere with the punishment and the workman is not entitled to any relief.

In support of such contention, the management representative placed reliance on the decision reported in AIR 2004 SC-4161 (Delhi Transport Corporation Vs. Shiv Sardar Singh).

7. The main contention raised by the learned advocate for the workman was that the workman was suffering from mental disease and as such the submission of the charge sheet against the workman is illegal and the entire departmental enquiry and so also imposition of the punishment basing on such illegal charge sheet are also illegal and the submission of the charge sheet and initiation of the departmental enquiry were against the provisions of Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation)

Act, 1995. The learned advocate for the workman in support of such contention, placed reliance on the decisions reported in All India Service Law Journal IX- 2008 (3) (SC)-I (Bhagwan Das Vs. Punjab State Electricity Board), (2003) 4 SCC-524 (Kunal Singh Vs. Union of India) and All India Services Law Journal III-2006 (1)-313 (Dharma Rao Vs. Union of India).

8. Perused the record including the evidence adduced by the parties and considered the submissions made by the parties during argument. The documents filed by the workman regarding his treatment at Dr. Rammanohar Lohiya Hospital show that the workman was treated for mental illness for the period from 21-03-2000 to 30-10-2001. However, it is clear from the own admission of the workman that after his treatment in Dr. Rammanohar Lohiya Hospital, he was completely cured and quite normal and from 08-04-2001 to 10-05-2002, he was regularly attending his duty in the Bank and he had never intimated the bank that he was mentally ill and from 11-05-2002, he was not under any medical treatment for his illness including mental illness. The said evidence of the workman finds support from the fact that he attended his duty regularly for the period from 08-04-2001 to 10-05-2002. From the materials on record, it is clear that the workman was not mentally ill either on 10-05-2002 or on 09-04-2003, on the date on which charge sheet was submitted against him or during the period of conducting the departmental inquiry or thereafter also. There is no evidence on record to show that the workman had acquired any disability during his service within the meaning of Section 2 of Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995. Hence, the provisions to the said Act do not apply to the case of the workman. As the provisions of the Act of 1995 have no application to the case of the workman, with respect, I am of the view that the three decisions cited by the learned advocate for the workman are also not applicable to the present case in hand. Hence, I find no force in the contentions raised by the learned advocate for the workman.

9. After going through the records of the enquiry proceedings, it is found that the findings of the enquiry officer are based on the evidence adduced in the enquiry and such findings are not based on any extraneous materials. The enquiry officer has assessed the evidence in a rational manner and has assigned reasons in support of the findings. Hence, the findings of the enquiry officer cannot be said to be perverse.

10. So far the proportionality of punishment is concerned, it is to be mentioned here that grave misconduct has been proved against the workman in a properly conducted departmental enquiry against him. The punishment of dismissal from service commensurate with the grave misconduct proved against the workman and

the same cannot be said to be shockingly disproportionate. Hence, there is no scope to interfere with the punishment. Hence, it is ordered :

ORDER

The action of the management of Reserve Bank of India in imposing the punishment of dismissal from services of Shri Ganesh Keshavrao Barapatre, Typist w.e.f. 16-07-2003 is legal & justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 जुलाई, 2012

का.आ. 2663.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, धनबाद के पंचाट (संदर्भ संख्या 16/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-07-2012 को प्राप्त हुआ था।

[सं. एल-20012/97/2007-आई आर (सीएम-I)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 24th July, 2012

S.O. 2663.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2008) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad as shown in the Annexure, in the Industrial Dispute between management of M/s. BCCL and their workman, which was received by the Central Government on 24-7-2012.

[No. L-20012/97/2007-IR (CM-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s. 10 (1) (d) (2A) of the Industrial Disputes Act, 1947.

REFERENCE No. 16 of 2008

Parties:

Employers in relation to the management of Sijua Area of M/s. BCCL..

AND

Their Workmen

PRESENT: Shri H.M. SINGH. Presiding Officer

APPEARANCES:

For the Employers : Shri D. K. Verma, Advocate

For the Workman : Shri T. P. Jha, Advocate

State : Jharkhand Industry : Coal

Dated, the 18-4-2012

AWARD

By Order No. L-20012/97/07-IR (CM-I) dated 17-8-07 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Sendra Bansjora Colliery of M/s BCCL in denying regularisation as Asstt. Foreman, T&S grade 'C' to Shri Bharat Mahato, E.P. Electrician (Excvn.) is justified and legal? If not, to what relief is the concerned workman entitled and from which date?"

2. The case of the concerned workman is that the concerned workman was initially posted as Electrical Helper in Category-II w.e.f. 8-4-82. Subsequently he was promoted in Category-IV as Electrician. He has passed Electrical Wiremanship Certificate Examination conducted by the Government of Bihar in the year 1988. In the year 1999 he has passed Electrical Supervisorship Examination Certificate both LT and HT. He was authorised to work as Electrical Supervisor alongwith 12 other employees vide office order dated 30-3-05 duly issued by the management. After one month, the Personnel Manager, Sijua Area issued an office order placing the concerned workman as EP Electrician in Category 'C' w.e.f. 1-4-06 which is illegal, arbitrary and unjustified. As per the stipulation of office order dated 30-5-2005 the management of Sijua Area is bound to place the concerned workman as Asstt. Foreman (Elect.) in Tech & Supervisory Grade 'C'.

It has been prayed that this Hon'ble Tribunal be pleased to pass an award directing the management to regularise the concerned workman as Asstt. Foreman (T&S) Grade 'C' w.e.f. 1-4-2006 i.e. from the date of his counterparts have been promoted.

3. The case of the management is that the concerned workman is a permanent employee of Sendre Bansjora Colliery working as EP Electrician in Exct. Grade 'D'. He was promoted to the post of E. P. Electrician, Excavation Category 'C' w.e.f. 1-4-2006 vide office order dated 1-4-2006. The above promotion was done according to the cadre scheme formulated by JBCCI. The demand made by the union for promotion of the concerned workman in the post of Asstt. Foreman (T&S) Grade 'C' is neither legal nor justified. As per the cadre Scheme an EP Electrician (Excv.) Category 'B' is eligible for promotion to the post of EP Electrician Excavation Category 'C'. There is no provision for promotion of an EP Electrician Excavation Category 'D' to the post of Asstt. Foreman, (T&S) Grade 'C'. Due to clerical mistake an office order was issued on 1-3-2006 by which the concerned workman was promoted to the post of Technical & Supervisory Grade 'C'. After rectifying the clerical mistake a fresh office order was issued on 1-4-06 and the concerned workman was promoted to the post of

EP Electrician Excavation Category 'C' w.e.f. 1-4-2006. For promotion to the post of Asstt. Foreman (T&S) Grade 'C' a workman has to complete three years experience in the post of EP Electrician Excv. Category 'C'. The concerned workman has not obtained any experience in the post of EP Electrician Excavation Category (C).

Under such circumstances it has been prayed that the Hon'ble Tribunal be pleased to pass an award holding that the action of the management is legal and justified and the concerned workman is not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The concerned workman produced himself as WW-1 and proved documents as Exts. W-1 to W-11

The Management has produced MW-1, Pawan Kumar Srivastava and proved documents as Ext.M-1.

6. Main argument advanced on behalf of the concerned workman is that he should have been promoted from EP Electrician in Excv. Grade 'D' to the post of Asstt. Foreman (Tech- & Supervisory) Grade 'C'. In this respect office order was issued and later on it was rectified. So it has been argued that he should be given promotion from EP Electrician Excv. Cat. C to Asstt. Foreman Tech. & Supervisory Grade 'C'.

It has been argued that other persons have been promoted by Office Order dated 23-2-2006 issued by Personnel Manager which is Ext.W-5, but just after one month vide office order dated 1-4-2006. The concerned workman was placed as EP Electrician Excvn. Cat. 'C', but other employees have been promoted.

In this respect the evidence of the concerned workman is very much material. In his cross examination he (WW-1) stated that I was EP Electrician Excvn. Grade. Electrical Supervisor, Technical Grade 'C' belongs to Electrical & Mechanical Grade. Both are of separate cadre. Both have got their own promotional channel. I have got no letter for change of cadre. I have got EP Electrician Excvn. Category 'C' from 1-4-2006.

From the statement of the concerned workman it shows that Electrical Supervisor, Technical Grade 'C' belongs to Electrical & Mechanical cadre. EP Electrician Excavation Grade and Electrical Supervisor Tech. Grade 'C' both have got their own promotional channel.

7. Considering the above facts and circumstances, I hold that the action of the management of Sendra Bansjora Colliery of M/s. BCCL in denying regularisation as Asstt. Foreman T&S Grade 'C' to Shri Bharat Mahato, EP Electrician (Excvn.) is justified and legal. Hence the concerned workman is not entitled to any relief.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 24 जुलाई, 2012

का.आ. 2664.—ऑड्योगिक विवाद अंधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑड्योगिक विवाद में केन्द्रीय सरकार ऑड्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 138/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-07-2012 को प्राप्त हुआ था।

[सं. एल-20012/93/2001-आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 24th July, 2012

S.O. 2664.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 138/2001) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workmen, which was received by the Central Government on 24-07-2012.

[No. L-20012/93/2001-IR (CM-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s. 10 (1) (d) (2A) of the Industrial Disputes Act, 1947.

REFERENCE No. 138 of 2001

Parties:

Employers in relation to the management of Sijua Area of M/s. BCCL Ltd.

AND

Their Workmen

PRESENT: Shri H.M. SINGH, Presiding Officer

APPEARANCES:

For the Employers : None

For the Workman : Shri S.S. Kesri, Advocate

State : Jharkhand

Industry : Coal

Dated, the 4th April, 2012

AWARD

By Order No. L-20012/93/2001-IR (CM-I) dated 18/4/2001 the Central Government in the Ministry of Labour

has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of BCCL, Sijua Area is not providing employment to the dependent of Late Raghu Prasad is justified ? If not, to what relief is the concerned workman entitled ?”

2. The case of the concerned workman is Raghu Prasad was a permanent Fitter at Basudepur Colliery and died on 20-12-93 at Central Hospital, Dhanbad. After his death the wife of deceased employee, Smt. Kapli Devi had applied for employment in a prescribed proforma under the laid down provisions of NCWA. The management turned down her prayer for employment and later on advised her to apply for employment of their son. Accordingly, Sanjay Prasad had applied for his employment on 24-8-98 enclosing therein all relevant papers, but the same was turned down by the management. When the matter was brought to the notice of District Administration, the authority concerned had also float an enquiry in the matter and found that Smt. Kopali Devi is the wife of Late Raghu Prasad and there is nothing adverse in against of her. The dependent of Late Raghu Prasad also approached to the higher authority to reconsider his case but all went invain. Seeing no other alternative an industrial dispute was raised before Asstt. Labour Commissioner (C) which ended in failure and the present reference is the out come that dispute.

Under the facts and circumstances stated above, it has been prayed that the Hon'ble Tribunal be pleased to pass an award by directing the management to provide employment to Shri Sanjay Kumar, dependent son of Late Raghu Prased, Ex-fitter of Basudepur colliery.

3. The case of the management is that Late Raghu Prasad was an employee of Basudepur colliery of BCCL and he died on 20-12-93. Smt. Kopali Devi claiming the wife of Late Raghu Prasad applied for employment on compassionate ground in place of Late Raghu Prasad in April, 1994. Her application was examined and it was found that Smt. Kopali Devi is not the legally married wife of Late Raghu Prasad and that she has been declared as the wife of one Sri Mangal Pasi, an Ex-employee of Basudepur colliery in the Nomination Form-F. Subsequently Smt. Kopali Devi vide her application dated 17-6-98 addressed to the General Manager, Koyla Bhawan requesting for employment to her son, Sanjay Kumar Prasad instead of her self in place of Late Raghu Prasad. Since Smt. Kopali Devi was not the legally married wife, her son also could not claim for employment in place of Late Raghu Prasad. Accordingly Smt. Kopali Devi and Sanjay Kumar/Prasad were informed regarding the decision of the competent authority vide letter dated 19-1-1999 with the instruction

that the son born from the first wife may apply for the job in place of deceased employee.

Under such circumstances it has been prayed that the Hon'ble Tribunal be pleased to pass an award holding that the action of the management is in not providing employment to the dependent of Late Raghu Prasad is justified and the concerned workman is not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. On behalf of the workman Kopali Devi (WW-1) and Dung Bijay Rajbhar (WW-2) and proved documents as Exts. W-1 to W-5.

No evidence has been adduced on behalf of the management.

6. Main argument advanced on behalf of the concerned workman is that Kopali Devi, wife of Late Raghu Prasad and the son of Kopali Devi, Sanjay Prasad had applied for employment of Sanjay Prasad on 24-8-98 under N.C.W.A., but the management turned down their request vide letter dated 19-1-99 down their request vide their letter dated 19-1-1999.

7. The management representative argued that Smt. Kopali Devi is second wife of Late Raghu Prasad and Sanjay Prasad is not her son, so he cannot be given employment. Moreover, it has also been argued that Smt. Kopali Devi is the wife of Mangal Pasi, so no employment can be given to her.

It has also been argued on behalf of the concerned workman that Sanjay Prasad had applied for his employment on 24-8-98 along with other documents, but the management illegally not giving employment in place of his father Late Raghu Prasad, who died on 20-12-93. As per Mukhiya Certificate Kopali Devi has been shown as Wife of Late Raghu Prasad. This documents has not been considered. Moreover, as per family pension letter (Ext. W-4) it has been shown that Kopali Devi has been giving family pension of Late Raghu Prasad. Family pension granted to Kopali Devi W/o Late Raghu Prasad and Bank Account has also been opened by Smt. Kopali Devi for pension and shown as W/o of Late Raghu Prasad. But the management illegally treating her as wife of Mangal Pasi. This document is nomination form in the name of Mangal Pasi and Kopali Pasi has been shown as his wife. But this document has not been shown that his Kopali Devi has filed nomination and pension sanctioned for her late husband and since then getting pension. Moreover, this document of management's document.

8. Considering the above facts and circumstances, I hold that the action of the management of BCCL, Sijua Area in not providing employment to the dependent of

Late Raghu Prasad is not justified. Accordingly, Sanjay Kumar/Prasad dependent son of Late Raghu Prasad is entitled for dependent employment. The management is directed to implement the Award within 30 days from the date of publication of the award.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 24 जुलाई, 2012

का.आ. 2665.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 120/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-07-2012 को प्राप्त हुआ था।

[सं. एल-20012/169/2003-आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 24th July, 2012

S.O. 2665.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 120/2003) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad as shown in the Annexure, in the Industrial Dispute between management of M/s. BCCL and their workman, which was received by the Central Government on 24-07-2012.

[No. L-20012/169/2003-IR (CM-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s. 10 (1) (d) (2A) of the Industrial Disputes Act, 1947.

REFERENCE No. 120 of 2003

Parties:

Employers in relation to the management of Kustore
Area of M/s. BCCL..

AND

Their Workmen

PRESENT: Shri H.M. SINGH, Presiding Officer

APPEARANCES:

For the Employers : Shri U. N. Lal, Advocate

For the Workman : Shri N. M. Kumar, Advocate

State : Jharkhand

Industry : Coal

Dated, the 17th April, 2012

AWARD

By Order No. L-20012/169/2003-IR (CM-I) dated 10-11-2003 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of BCCL, Kustore Area in termination the services of Shri Rajesh Kumar w.e.f. 28-2-96 is justified ? If not, to what relief is the concerned workman entitled ?”

2. The case of the concerned workman is that he was permanent employee of BCCL posted on the post of Dumper Driver at Hurladah Colliery. The concerned workman in mental disorder absented from his duty from 30-9-93 to 27-11-01 on due information to the management by his father dated 4-10-93, 23-9-94 through registered post. During this period he was under intensive treatment of doctor at Ranchi. After recovery, the concerned workman submitted his joining before the colliery management on 29-11-01, but he was not allowed to resume his duty and on the contrary, he was served with termination order for allegation of un-authorised absenteeism on the basis of ex parte domestic enquiry. Thereafter the concerned workman under para 30 of Certified Standing Orders preferred appeal before the Appellate Authority-cum-Area General Manager, Kustore, but no response is given as yet by the Appellate Authority.

As such the said termination order is quite illegal, mala fide, arbitrary and against the norms of natural justice. No notice of domestic enquiry no findings of domestic enquiry was ever served to the workman concerned. He was never given any opportunity to defend his case. The absenteeism in mental disorder will never come within ambit of misconduct. On the contrary management has violated the provision of Sec.2(c) of Human Transplantation of Human Organ Act, 1994 by dismissing an employee who is suffering from mental disorder. Such person shall be deemed as dead within meaning of this section and a dead person cannot be dismissed from service.

Under the facts and circumstances stated above, it is prayed that the Hon'ble Tribunal be pleased to pass an award in favour of the workman.

3. The case of the management is that the concerned workman, Rajesh Kumar, Dumper Driver, had absented unauthorisedly without any permission w.e.f 27-9-93 as per Clause 26.1.1 being habitual absentee. He was issued with a charge sheet dated 11-1-1994. Sri P. K. Srivastava, Sr. P. O. was appointed as Enquiry Officer to conduct the domestic enquiry against the concerned workman. The concerned workman was issued notices of enquiry by the Enquiry Officer fixing the date on 27-7-95, but the concerned workman did not turn up. The enquiry

was held ex-parte where the management representative produced the prosecution witness. The Enquiry Officer submitted the enquiry report to the disciplinary authority along with enquiry proceeding's copy. Thereafter show cause notice was issued by the management to the concerned workman with 2 weeks time. No reply was sent by the charge sheeted employee of the second show cause notice. Thereafter the concerned workman was dismissed from service w.e.f 28-2-96. The action of the management in terminating the service of the concerned workman is just, fair and quite reasonable and he is not entitled to get any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The enquiry was found to be fair and proper on 10-3-2011.

The concerned workman filed Exts. W-1 and Ext. W-2.

The management filed documents marked as Exts. M-1 to M-8, in formal proof.

6. Main argument advanced on behalf of the concerned workman is that his service has been terminated without giving proper opportunity and he was absent from duty from 30-9-93 to 27-11-01 with due information to the management by his father, P. Singh dated 4-10-93, 23-9-94 by registered post. But the management illegally terminated his service.

7. The management's representative argued that the concerned workman absented from service for long time from 27-9-93 and he was habitual absentee, so he was issued chargesheet as per Clause 26.1.1 of the company's standing Order. The Disciplinary Authority appointed Enquiry Officer who had done enquiry and found that he actually absented for long time without information and without any leave application.

8. It has been argued on behalf of the concerned workman is that he was getting his treatment at Ranchi and ex-parte enquiry was done by the management.

9. Considering the enquiry conducted by the management it shows that the concerned workman was long absentee and did not able to perform his job and get treatment, though he has not filed any such treatment paper for long treatment at Mental Hospital, Ranchi, which may be believed that he was actually ill.

10. Considering the above facts and circumstances, I hold that the action of the management of BCCL, Kustore Area in terminating the services of Rajesh Kumar w.e.f. 28-2-96 is justified and the concerned workman is not entitled to any relief.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 24 जुलाई, 2012

का.आ. 2666.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, धनबाद के पंचाट (आई डी संख्या 131/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/7/2001-आई आर (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 24th July, 2012

S.O. 2666.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 131/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workman, which was received by the Central Government on 24-7-2012.

[No. L-20012/7/2001-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s. 10(1)(d) (2A) of the
Industrial Disputes Act, 1947

Reference No. 131 of 2001

PARTIES:

Employers in relation to the management of Argada Colliery of M/s. C.C. Ltd.

AND

Their Workman

PRESENT:

Shri H. M. Singh, Presiding Officer

APPEARANCES:

For the Employers	:	Shri D.K. Verma, Advocate
For the Workman	:	Shri D. Mukherjee, Advocate
State : Jharkhand		Industry : Coal

Dhanbad, the 2-4 -2012

AWARD

By Order No. L-20012/7/2001-IR (C-I), dated 22-5-2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of

sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Argada Colliery of M/s. C.C. Ltd. in not providing employment to the dependent of late Parna is justified ? If not to what relief is the said dependant entitled ?”

2. The case of the concerned workman is that Late Parna had been working as permanent S.F. Khalasi at Argada Colliery since long with unblemished record of service. Unfortunately he died on 23-2-90 during the tenure of his service. The management implemented NCWAs which is also a settlement and as per the same the dependent of late Parna is entitled for employment. The wife of late Parna represented before the management for providing employment to his eldest son, namely, Mohan Bedia. But the management did not provide employment to Mohan Bedia and unfortunately the poor Adivasi boy died on 4-2-96. Thereafter the wife of late Parna represented before the management for providing employment to another son, namely, Suraj Nath Bedia. All formalities for dependent employment was complete, but the management did not provide him employment on the alleged ground of delay. The wife of late Parna and the union on behalf of the dependent son represented before the management but without any effect. Thereafter the union raised an industrial dispute before the A.L.C. (C) which ended in failure. The Govt. of India, Ministry of Labour referred the dispute for adjudication to this Tribunal.

Under such circumstances, it has been prayed before the Hon'ble Tribunal to answer the reference in favour of the workman by directing the management to provide employment to the dependent of late Parna with retrospective effect with all attendant benefits.

3. The case of the management is that one workman, Parna was working as surface fan khalasi at Argada Colliery with effect from 1-4-74. In his service except of 1987, he declared the name of his wife as Fulki Devi and declared that he had only one son, named, Raj Kumar. The aforesaid workman abandoned his service w.e.f. 15-7-89 and the management did not receive any information relating to the cause and circumstances under which he abandoned his service w.e.f. 15-7-89. Smt. Fulki Devi wife of the aforesaid workman made an attempt to get some of her relatives employed in the service of the company by declaring him as the dependent son of the aforesaid workman stating that her husband died on 23-2-90 and she has right to sponsor his son for employment as dependent. It is submitted that as the workman concerned left his employment with his own volition at his own discretion w.e.f. 15-7-89, he was not earning any amount from the colliery and the question of any dependent on his earnings did not and cannot arise. Mohan Bedia had not been

declared as the son of Parna in the service excerpt and he was also not medically fit to be employed in a coal mine in the capacity of miner/loader. The demand advanced by the sponsoring union is not bonafide and it is an attempt to get employment on some pretext or other with the help of litigation. The concerned lady is not entitled to get any person employed in the capacity of dependent son of late Parna.

Under the facts stated above, it has been prayed that the Hon'ble Tribunal be pleased to pass the award holding that no relief can be granted to any person in the form of dependent of late Parna.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The management produced MW-1, Umesh Singh, who proved document as Ext. M-1.

The concerned workman produced WW-1, Suraj Nath Bedia.

6. Main argument advanced on behalf of the concerned workman is that his father, Parna, was a permanent employee of the management, who died on 23-2-90 during the tenure of his service. As per provisions of NCWA my mother, namely, Fulki Devi submitted application for providing employment to my elder brother, namely, Mohan Bedia. Later on Mohan Bedia died on 4-2-1996. After death of my elder brother, my mother represented before the management on 15-1-07 for providing myself employment in place of my late father, Parna.

7. Management's representative argued that Parna was an employee of the management, who died on 23-2-90 during the tenure of service and in his service excerpt he declared the name of his wife as Fulki Devi and declared that he had only one son, Raj Kumar. So, he cannot be given employment.

8. In this respect in service excerpt only the name of Raj Kumar has been shown as dependent son, so it cannot be presumed that the concerned workman is the dependent son of Parna because the service excerpt is statutory document which is kept by the management.

In this respect it has been argued on behalf of the management that in Ext. M-1 it has been mentioned in the last page that my full name is Parna Bedia. Name of my son, Raj Kumar is wrong. Elder son is Mohan Bedia and younger son is Suraj Nath Bedia. But it does not find any signature of the author of the management's officer or the concerned workman, so it has got no value.

In the service excerpt, the name of Smt. Fulki Devi wife and Ram Kumar, son is mentioned and the name of Mohan Bedia does not appear and he is son of Parna, so, he cannot be given employment by the management.

8. On behalf of the workman 2007 (4) JLJR pg. 145 has been referred in which Hon'ble Supreme Court laid down that in the mine the dependent was below 18 years at the time of death of his father and after attaining the age he applied but the management rejected on the ground of delay. The Hon'ble Supreme Court laid down that when there is settlement and alleged roster then the name of the dependent should have been entered in live roster after attaining the age and he should have been given employment.

Another law referred on behalf of the workman is 2005 (2) JLJR 671 in which Hon'ble Jharkhand High Court laid down that the claim made by son of the deceased rejected on the ground that his name did not appear in relevant service documents of the deceased, however, several documents annexed by petitioner showing the claimant as the legitimate son of the deceased who died in harness, so the legitimate claim of petitioner, the matter needs re-consideration by the respondent.

In the present case the concerned person has not filed any genuine documents to show that he is the son of late Parna.

9. Considering the above facts and circumstances, I hold that the action of the management of Argada Colliery of M/s. C.C. Ltd. in not providing employment to the dependent of late Parna is justified. Hence, the dependent of late Parna is not entitled to any relief.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 24 जुलाई, 2012

का.आ. 2667.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, धनबाद के पंचाट (आई डी संख्या 125/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/221/1991-आई आर (सी-1)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 24th July, 2012

S.O. 2667.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 125/1992) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the

management of M/s. ECL and their workman, which was received by the Central Government on 24-7-2012.

[No. L-20012/221/1991-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s. 10(1)(d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 125 of 1992

PARTIES:

Employers in relation to the management of Shampur 'B' Colliery of M/s. E.C. Ltd.

AND

Their Workman

PRESENT:

Shri H. M. Singh, Presiding Officer.

APPEARANCES:

For the Employers	:	Shri B. M. Prasad, Advocate
For the workman	:	Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union
State : Jharkhand		Industry : Coal

Dhanbad, the 19-4-2012

AWARD

By Order No. L-20012/221/91-IR (Coal-I), dated 18-9-1992 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Shampur 'B' Colliery of M/s. Eastern Coalfields Ltd. in not regularising Shri Sushil Modi as Magazine Clerk w.e.f. 1985 is justified ? If not, to what relief the workman is entitled to ?"

2. The case of the concerned workman is that he has been working as Magazine Clerk since 1998 continuously and has put in 240 days attendance in each calendar year. The management has implemented Wage Board Recommendation and as per that all the workmen are entitled to receive wages and designation. The concerned workman represented before the management for his regularisation as Magazine Clerk but without any effect. As per policy decision of the management the concerned workman is entitled for regularisation as Magazine Clerk. Seeing no other alternative an industrial

dispute was raised before the A.L.C. (C), Dhanbad, which ended in failure and the present dispute has been referred by the Ministry of Labour for adjudication to this Hon'ble Tribunal.

It has been prayed that this Hon'ble Tribunal be pleased to answer the reference in favour of the workman by directing the management to regularize the concerned workman atleast w.e.f. 1985 with all arrear of wages and consequential benefits.

3. The case of the management is that Shampur 'B' Colliery falls in Kapasara Area of Eastern Coalfields Ltd. which has a large number of collieries located in West Bengal and Bihar. Shri Sushil Modi is employed in Shampur 'B' Colliery as a Pump Khalasi and he is paid wages as provided in the N.C.W.A. from time to time. The minimum educational qualifications laid down for the post of Magazine Clerk is Matriculation or its equivalent examination. But the concerned workman was not a matriculate. His education qualification is far low than that of matriculation. On some occasions when Shri P. K. Mondal, regular Magazine Clerk was sick or on leave, Shri Sushil Modi was authorised to work in his place. It also happened that sometimes Shri Sushil Modi was also directed to collect explosives from the neighbouring Mandaman Colliery of ECL. Such a job could be given to any employee and it need not necessarily be done by a Magazine Clerk. Under the N.C.W.A. There is a provision for employment of Explosive Carriers and they are in daily rated Category-II. The concerned workman is in a much higher daily rated category than Category-II in the capacity of Pump Khalasi.

In the light of the aforesaid submission, they are not required to regularise the concerned workman as Magazine Clerk w.e.f. 1985 or from any other date and as such, it has been prayed that the Hon'ble Tribunal be pleased to pass an award in favour of the management by rejecting the claim/prayer of the union.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. No oral documentary evidence has been adduced from either side, on which basis it can be said that the action of the management was not justified.

6. I have gone through the written statements of both the parties. It appears from the record that the concerned workman does not possess requisite educational qualification for the post of Magazine Clerk. The minimum educational qualification for the post of Magazine Clerk is matriculation or its equivalent examination. But the educational qualification of the concerned workman is far below than that of matriculation. So, he is not entitled to be regularised as Magazine Clerk.

7. In the result, I hold that the action of the management of Shampur 'B' Colliery of M/s. E.C. Ltd. in not regularising Shri Sushil Modi as Magazine Clerk w.e.f. 1985 is justified and the concerned workman is not entitled to any relief.

H. M. SINGH, Presiding Officer

नई दिल्ली, 24 जुलाई, 2012

का.आ. 2668.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, धनबाद के पंथाट (आई डी संख्या 122/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/313/1991-आई आर (सी-I)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 24th July, 2012

S.O. 2668.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 122/1992) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. ECL and their workmen, which was received by the Central Government on 24-7-2012.

[No. L-20012/313/1991-IR(C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s. 10(1)(d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 122 of 1992

PARTIES:

Employers in relation to the management of Mandman Colliery of M/s. Eastern Coalfields Ltd.

AND

Their Workmen

PRESENT:

Shri H. M. Singh, Presiding Officer.

APPEARANCES:

For the Employers	: Shri B. M. Prasad, Advocate
For the workmen	: Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union

State : Jharkhand

Industry : Coal

Dhanbad, the 18-4-2012

AWARD

By Order No. L-20012/313/91-IR (Coal-I), dated 18-9-1991 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of M/s. Eastern Coalfields Ltd., Kapasara Area in relation to their Mandman Colliery in not regularising S/Shri Badri Roy and 8 others (as in the annexure) as water supplier is justified ? If not, to what relief the workmen concerned are entitled ?"

ANNEXURE

1. Shri Badri Roy
2. Shri P. Yadav
3. Shri Arjun Rana
4. Shri Sridam Gorai
5. Shri J. B. Roy
6. Shri Devendra Mandal
7. Shri Mandal
8. Shri Rajendra Yadav
9. Shri Naresh Kr. Mahanti

2. The case of the concerned workman is that they have been working as Water Carrier at Kapasara Area since long continuously under the direct control and supervision of the management. They have been performing permanent nature of job and have put in 240 days attendance in each calendar year. The management is neither paying the concerned workmen wages as per NCWA nor maintaining statutory records in respect of the concerned workmen. They represented before the management several times for their regularisation atleast as Category-I Mazdoor, but without any effect. Seeing no other alternative the union raised an industrial dispute before the A.L.C. (C), Dhanbad, but the same ended in failure. The Govt. of India, Ministry of Labour, has referred the dispute for adjudication to this Tribunal. The action of the management in not regularising the concerned workmen is not justified.

In such circumstances, it has been prayed that the Hon'ble Tribunal be pleased to answer the reference in favour of the concerned workmen by directing the management to regularise the concerned workmen with all consequential benefits.

3. The case of the management is that Mandman colliery has provided quarters to its employees in the residential township. When there was no arrangement for providing piped drinking water supply to the employees residing in the colony, the management made arrangements for supply of drinking water with the persons engaged in that business and for supplying it to the employees residing in the said colony. The above arrangements of sale and purchase of water is like sale and purchase of any other items between the management and other parties. By such arrangement, no employer-employee relationship can ever be established between this management and the persons supplying water. The persons supplying water were paid for the water supplied at agreed rates from time to time. The management has since made arrangements for provision of piped water supply for drinking purposes in the aforesaid colony to the employees. So, the management does not require the services of any persons or person referred to in reference order for such job.

Under such circumstances, it has been prayed that the Hon'ble Tribunal be pleased to hold that the demand of the union concerned is not justified and the concerned persons are not entitled to any relief.

In rejoinder the management has stated almost same things as have been stated in the written statement.

4. No any oral evidence has been adduced by either party nor any written argument has been submitted from either party.

5. I have gone through the written statements of both the parties and come to the conclusion that the action of the management of M/s. Eastern Coalfields Ltd., Kapasara Area in relation to their Mandman Colliery in not regularising S/Shri Badri Roy and 8 others as water supplier is justified and the concerned workmen are not entitled to any relief.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 24 जुलाई, 2012

का.आ. 2669.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इसी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम व्यायालय नं. 1, धनबाद के भंचाट (आई डी संख्या 128/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/234/1991-आई आर (सी-1)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 24th July, 2012

S.O. 2669.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 128/1992) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. ECL and their workman, which was received by the Central Government on 24-7-2012.

[No. L-20012/234/1991-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference U/s. 10(1)(d)/(2A) of the
Industrial Disputes Act, 1947

Reference No. 128 of 1992

PARTIES:

Employers in relation to the management of
M/s. Eastern Coalfields Ltd.

AND

Their Workmen

PRESENT:

Shri H. M. Singh, Presiding Officer.

APPEARANCES:

For the Employers : Shri B. M. Prasad, Advocate

For the workmen : Shri D. Mukherjee, Secretary,
Bihar Colliery Kamgar Union.

State : Jharkhand

Industry : Coal

Dhanbad, the 3rd April, 2012

AWARD

By Order No. L-20012(234)/91. IR (Coal-I) dated 30-9-92 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of M/S. Eastern Coalfields Ltd., Nirsa Area in relation to their Hariajam Colliery in not regularising S/Shri Sona Yadav and 14 others as Water Supplier is justified ? If not, to what relief the workmen concerned are entitled ? A list of workers is enclosed.”

2. The case of the concerned workmen is that the concerned workmen, S/Shri Sona Yadav and 14 others have

been working as Water Carrier at Nirsa Area since long with unblemished record of service. They are doing permanent nature of job under the direct control and supervision of the management. They have pur in 240 days attendance in each calendar year. The management implemented Wage Board Recommendation and Wage Board Recommendation has got statutory force. As per Wage Board Recommendation the Water Carriers are entitled for Category-I Wages. The management is neither paying them wages as per NCWA. They represented before the management several times for their regularisation atleast as Category-I Mazdoor but till today without any effect. Thereafter, an industrial dispute was raised before A.L.C.(C), Dhanbad, but the same ended in failure and ultimately, the present dispute has been referred to this Tribunal/for adjudication. The action of the management in not regularising the concerned workmen is not justified.

In such circumstances, it has been prayed that the Hon'ble Tribunal be pleased to pass an award in favour of the workmen by directing the management to regularise the concerned workmen with retrospective effect with all arrears of wages and consequential benefits.

3. The case of the management is that the management had made arrangement in the residential township which is located far away from the colliery for supply of drinking water to a section of the workers/employees. A residential township does not fall within the definition of Mines under the Mines Act, 1952. For this purpose, from time to time, the management made arrangement with different persons at different times for supplying drinking water to a section of employees residing in the colony through their own arrangement subject to payment for supply of water at agreed rates from time to time. This arrangement is purely an arrangement as between a supplier and purchaser. The suppliers were changing from time to time. The management as per the above arrangement paid the water supply contractor/party periodically for the quantity of water supplied at agreed rates on the basis of bills submitted by him and payment was made to him through vouchers. When the management found that the above arrangement was no longer necessary, it was discontinued. The party who took the responsibility for supply of water, was keeping his own men for the purpose and making payment of wages to them. Management was nothing to do with this arrangement. It has been submitted that the management is not required to absorb or regularise the persons concerned as water suppliers.

Considering all the facts and circumstances it has been submitted that the claim of the Union concerned for so called regularisation of the persons concerned is not all justified and in consequent they are not entitled to any benefit whatsoever. It has been prayed that this Hon'ble Tribunal be pleased to hold that the concerned persons are not entitled to any relief.

In rejoinder to the written statement of the union, the management has stated almost the same things as have been stated in its written statement.

4. The management produced MW-1, Saroj Kanti Sahana in support of its written statement.

5. On behalf of the management it has been argued that the concerned persons have not worked with the management. They are only water suppliers. They supply water in residential quarters of the employees. they are simply the venders or suppliers of water. So, they cannot be regularised by the management.

In this respect on behalf of the concerned workmen nobody has come forward to examine himself in support of their written statement. Moreover, they are only water suppliers to the management and they are not workers of the management. They are venders or suppliers of water.

6. Considering the above facts and circumstances, I hold that the action of the management of M/S. ECL Nirsa Area in relation to their Harijam Colliery in not regularising S/Shri Sona Yadav and 14 others, as per list mentioned in the order of reference, is justified and hence the concerned persons are not entitled to any relief.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 24 जुलाई, 2012

का.आ. 2670.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण एवं श्रम न्यायालय नं. 1, धनबाद के पंचाट (आई डी संख्या 6/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2012 को प्राप्त हुआ था ।

[सं. एल-20012/243/1990-आई आर (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 24th July, 2012

S.O. 2670.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/1991) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 24-7-2012.

[No. L-20012/243/1990-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. I, DHANBAD**

In the matter of a reference U/s. 10(1)(d)(2A) of the
Industrial Disputes Act, 1947

Reference No. 6 of 1991

PARTIES:

**Employers in relation to the management of
Bhowra Area No. XI of M/S. BCCL**

AND

Their Workman

PRESENT:

Shri H. M. Singh, Presiding Officer

APPEARANCES:

For the Employers : None

**For the workman : Shri R. Rai, President,
Lal Jhanda Mazdoor Union**

State : Jharkhand Industry : Coal

Dhanbad, the 16th April, 2012

AWARD

By Order No. L-20012/243/90-IR (Coal-I) dated
5-2-1991 the Central Government in the Ministry of Labour
has, in exercise of the powers conferred by clause (d) of
sub-section (1) and sub-section (2A) of Section 10 of the
Industrial Disputes Act, 1947, referred the following dispute
for adjudication to this Tribunal :

“Whether the action of the management of
Bhowra Area No. XI of M/S. BCCL is justified in not
promoting Sri Arun Kumar from Technical Grade ‘C’
to Technical Grade ‘B’? If not to what relief Sri Arun
Kumar is entitled ?”

2. The case of the concerned workman is that he
had been working as a permanent Pharmacist since 1973
continuously. The management illegally and in violation of
the norms of promotion promoted him to the post of
Pharmacist Grade ‘C’ in 1980. As per settled law he should
have been promoted to the post of Pharmacist Grade ‘C’ in
the year 1973 when his junior had been placed in that Grade
‘C’. The management framed a promotion policy for
promoting the Pharmacist from Grade ‘D’ to Grade ‘C’ and
from Grade ‘C’ to Grade ‘B’ and from Grade ‘B’ to Grade ‘A’
and so on. The concerned workman had been working in
Grade ‘C’ since 1980 and as per settled law and as per
management’s own cadre scheme also he should have been
placed in Grade ‘B’ atleast from 1987 but till to date without
any effect. Thereafter an industrial dispute was raised
before the A.L.C. (C), Dhanbad but the same ended in failure.

Thereafter the dispute has been referred to this Tribunal
for adjudication. It has been submitted that the action of
the management in not promoting the concerned workman
from Grade ‘C’ to Grade ‘B’ is not justified.

It has been prayed that the Hon’ble Tribunal be
pleased to pass an award in favour of the workman by
directing the management to promote the concerned
workman to Technical Grade ‘B’ with retrospective effect
with all arrears of wages and consequential benefits.

3. The case of the management is that as per the
recommendation of Coal Wage Board, the personal
belonging to medical department used to be fixed in Grade
‘H’ and above upto Grade ‘A’. The Doctors used to be
fixed in Grade ‘A’ and ‘B’ and the Compounders used to be
fixed in Grade ‘E’ and ‘D’. The concerned workman Arun
Kumar was appointed as Compounder in Grade ‘D’ on
23-5-73 and he continued in that capacity upto 1980.
Management created the post of senior Compounders/
Pharmacists in Grade ‘C’ after introduction of NCWA-II
w.e.f. 1-1-79 and promoted compounders in Gr. ‘D’ to Gr. ‘C’
on the basis of seniority-cum-merit. D.P.C. was constituted
area wise and promotions were granted considering the
seniority and merit area wise. The concerned workman was
promoted to Technical Grade ‘C’ on 4-12-80. A seniority list
of Grade ‘C’ Compounder/Pharmacists was circulated in
respect of entire management of BCCL on 22-11-86. The
name of the concerned workman appears at serial No. 32
and he had already completed minimum of five years
experience in Grade ‘C’. The management promoted
Compounder/Pharmacists in Grade ‘C’ to Gr. ‘B’ by office
order dated 7-2-87 on the basis of recommendation of DPC
from serial no. 1 to 25 of the seniority list. In such
circumstances the concerned workman is not entitled
promotion from Gr. ‘C’ to Gr. ‘B’.

It has been prayed that the Tribunal be pleased to
pass the award holding that the concerned workman is not
entitled to any relief.

4. Both the parties have filed their respective
rejoinders admitting and denying the contents of some of
the paragraphs of each other’s written statement.

5. The concerned workman has examined himself as
WW-1 (Arun Kumar).

The management examined MW-1, Rabindra Nath
Mitra, who proved Exts. M-1 to M-3.

6. Main argument advanced on behalf of the
concerned workman is that he has not been promoted from
Grade ‘C’ to Grade ‘B’.

Management argued that promotion is made from
Grade ‘C’ to Grade ‘B’ on the basis of recommendation of
D.P.C.

In this respect it has also been argued that the promotions were made from Gr. 'C' to Gr. 'B' on the recommendations of D.P.C. from the seniority list. The concerned workman's name was appearing at Serial No. 32 of the seniority list and only 14 persons were recommended by D.P.C. who have been promoted from Gr. 'C' to Gr. 'B'. So, the concerned workman can not be given promotion from Gr. 'C' to Gr. 'B'.

7. The concerned workman, WW-1, stated in his cross-examination that in the panel prepared by the D.P.C. my name had figured at Serial No. 32. On the basis of that recommendation 14 persons were promoted to Grade 'B'. He also stated that I am in Grade 'B' since 1990.

It shows that he was promoted in Grade 'B' in 1990. So, when he was at Serial No. 32 and only 14 persons have been promoted, he could not be promoted.

8. Considering the above facts and circumstances, I hold that the action of the management of Bhowra Area No. XI of M/S. BCCL is justified in not promoting Shri Arun Kumar from Technical Grade 'C' to Technical Grade 'B'. So, the concerned workman is not entitled to any relief.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 24 जुलाई, 2012

का.आ. 2671.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, धनबाद के पंचाट (आई डी संख्या 26/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/296/1997-आई आर (सी-1)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 24th July, 2012

S.O. 2671.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.26/1998) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 24-7-2012.

[No. L-20012/296/1997-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 26 of 1998

PARTIES:

Employers in relation to the management of Jogidih Colliery of M/S. BCCL.

AND

Their Workmen

PRESENT:

Shri H. M. Singh, Presiding Officer

APPEARANCES:

For the Employers : Shri D. K. Verma, Advocate

For the workmen : Shri R. Ranjan, Advocate

State : Jharkhand Industry : Coal

Dhanbad, the 17th April, 2012

AWARD

By Order No. L-20012/296/97-IR (C-I) dated 28-5-1998 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the denial of employment to S/Sh. Pokhan Das, Munilal Rajwar, Kishore Das, Godadhar Rajwar and Jageshwar Das by M/S. BCCL is justified ? If not, to what relief are these workmen entitled ?"

2. The case of the concerned workman is that in accordance with the requirement of personnel in the job of miner/loaders in general, the concerned workmen approached the management of Jogidih colliery. Management offered such persons as badli miner/loaders and the concerned 5 workmen were selected for employment as badli miner/loader during 1986. They came to know through their unions that selected persons list including the concerned five workmen were sent to BCCL headquarters for issue of employment orders to the colliery management. In that process the BCCL issued letters of employment from time to time to different persons excluding these five workmen for reasons best known to the management. After waiting for a long time the union of the workmen raised an industrial dispute before the A.L.C. (C), Dhanbad, but the same ended in failure and hence this dispute before this Hon'ble Tribunal for adjudication.

It has been prayed that this Hon'ble Tribunal be pleased to pass an award in favour of the five concerned workman by directing the management to treat the concerned five workmen as badli miner/loader since 1986 and as permanent employees since 1987.

3. The case of the management is that the sponsoring union represented before the ALC (Central), Dhanbad, in the year 1996 that the concerned persons were selected for their enrolment as badli miner/loader by the management of Gobindpur Area in the year 1986 and they had not been provided employment till date and demanded that they should be provided employment by the management. It has been submitted that the management after receipt of the notice of the ALC (C), Dhanbad got surprised to receive such demand of the union after a long lapse of about 10 years and could not find any record on the basis of which the union advanced such absurd claim. In the year 1986 the management recruited some of the workmen in accordance with the guidelines issued by circular dated 8-5-86 to fill up the available vacancies at that particular time and in the year 1992 all such circulars for recruitment of workers on some basis or other were withdrawn/cancelled as there was large scale surpluses in almost all the collieries. Therefore, the question of recruitment of more workmen did not and cannot arise in the year 1996. The management is not having any record in respect of selection of the concerned persons and, as such, the entire case is false and manufacture for the purpose of getting employment into the services of the company. So, the concerned persons are not entitled to any relief.

It has been prayed that the Hon'ble Tribunal be pleased to pass an award holding that the concerned persons are not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying some of the paragraphs of each other's written statement.

5. The management produced MW-1, B. S. B. Rao.

The concerned workmen have produced WW-1, Muni Lal Rajwar, WW-2, Pokhan Das and proved documents as Exts. W-1 to W-5.

6. It has been argued on behalf of the concerned workmen that there has been system by the Government to absorb scheduled caste and scheduled Tribe in the B.C.C. Ltd., but the management has not given them employment. The action of the management is not justified and they should be given employment.

7. The management argued that there is no employer-employee relationship between the concerned persons and the management. They are job seeker. They have not worked for a single day. So, they cannot be regularised. They have got no right for employment.

8. In this respect the statement of the concerned workman WW-1, Muni Lal Rajwar, is relevant. In his cross-examination at page 5 stated that we have got no interview letter and WW-2, Pokhan Das, stated in his cross-examination that I have not filed interview letter issued by the management. I have got no letter showing that after interview I was selected. I have got no appointment letter. I have not filed selection list in which my name was appearing. I have not filed any interview letter of other persons. Nobody had got appointment letter. This statement of the concerned workman shows that no appointment letter was issued in the name of the concerned workmen and they are not in the roll of the management.

9. The evidence of the management's witness MW-1 in his cross-examination is that the circular dated 8-5-1986 was discontinued in the year 1992. During the period a number of persons have been appointed. Mahadeo Das and Gulab Das were appointed under this circular. The names of the concerned workmen were existed in the panel of Gulab Das and Mahadeo Das but they have not been appointed. But this panel does not give any right to the concerned workmen for their employment. Moreover, no reason has been given by the union for raising the dispute after a lapse of about 10 years.

10. Considering the above facts and circumstances, I hold that the denial of employment to S/Sri Pokhan Das, Munilal Rajwar, Kishore Das, Godadhar Rajwar and Jageshwar Das by M/s. B.C.C. Ltd. is justified and the concerned workmen are not entitled to any relief.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 24 जुलाई, 2012

का.आ. 2672.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.एम.पी.एण्ड डी.आई.एल.के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (आई डी संख्या 18/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-07-2012 को प्राप्त हुआ था।

[सं. एल-22012/249/2004-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 24th July, 2012

S.O. 2672.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of Central Mine Planning & Design Institute Ltd., Central Mine

Planning & Design Institute Ltd., and their workman, which was received by the Central Government on 24-07-2012.

[No. L-22012/249/2004-IR (CM-II)]
B.M. PATNAIK, Section Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
BHUBANESWAR**

PRESENT:

Shri J. Srivastava, Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar

Industrial Dispute Case No. 18/2005

Date of Passing Award—13th July, 2012

BETWEEN :

1. The Regional Director,
Central Mine Planning & Design Institute Limited,
CMPDIL, Regional Institute-VII,
4th Floor, Gruha Nirman Bhavan,
Sachivalaya Marg, Bhubaneswar
(Orissa)-751001
 2. The Office-in-Charge,
Central Mine Planning & Design Institute Ltd.,
Camp Office-Talcher, PO. Dera,
Dist.Angul . . . 1st Party-Management

AND

Their workman Shri Umesh Chandra Gochhayat,
PO Dera Colliery, Talcher
CMPDI Camp Talcher,
Dist. Angul-759 103 ... 2nd Party-Workman

APPEARANCES:

M/s. N.K. Mishra & Associates, Advocate : For the 1st Party- Management Nos. 1 & 2.

None : For the 2nd Party-Workman

AWARD

The present reference has been made by the Government of India in the Ministry of Labour in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide letter No. L-22012/249/2004-IR (CM-II), dated 5-7-2005 arising out of an industrial dispute in between the employers in relation to the management of Central Mine Planning & Design Institute Ltd. and their workman.

- ? The dispute under reference reads as follows :

Whether the action of the management of Central Mines Planning and Design Institute Ltd., in relation to their talcher Camp in terminating the services of Sh. Umesh Chandra Gochhayat w.e.f. 7-8-2003 is legal and justified? If not, to what relief the workman is entitled ?

3. The 2nd Party-workman in his statement of claim has stated that he had been working as a casual labour under the Central Mines Planning & Design Institute Limited for the last 12 years under direct control of Shri Jagajit Banerjee, Officer in-charge CMPDI Limited camp office, Talcher. His attendance was marked in the attendance register maintained by the CMPDI Limited. He received wages at the rate of Rs. 45 per day as per pay register. During the period of 12 years he had worked as casual labour in 23 numbers of machines. He once requested the Officer in-charge Shri Indrajit Banerjee for some money in advance from his salary to meet out his urgent need which was to be adjusted from his salary. Shri Indrajit Banerjee refused to pay and abused him in filthy language saying that "you Hadi, Scheduled caste get out from the office and do not come again for begging" and suspended him from service for two months. The misbehavior of Shri Indrajit Banerjee was intolerable. So he made a complaint to the Minister and other civil authorities. Shri Indrajit Banerjee out of grudge terminated his service with effect from 7-8-2003. He wrote to the Regional Director, CMPDI Limited, Bhubaneswar for justice and requested him to regularize him as a permanent employee. The Regional Director in reply informed him that he was not an employee of the CMPDI Limited as he was working under the Contractor. The allegation of the Regional Director is not correct as no contractor has been enlisted with the CMPDI Camp Office, Talcher for any work. He was doing the work of perennial nature for which employment of contract labour is prohibited under law. He then raised the dispute before the Assistant Labour Commissioner (Central) and on failure of conciliation proceedings necessary report was sent to the Government of India which referred the present dispute. The 2nd Party-workman has prayed to set aside the illegal termination of his service and to reinstate him in service with full back wages and regularization.

4. The 1st Party-Management has denied all allegations of the 2nd Party-workman and stated them to be false, baseless and misconceived. It has been specifically denied that the 2nd Party-workman had been working as a casual labour under the 1st party-Management for the last 12 years. It has also been denied that any officer named as Jagjit Banerjee was Officer-in-charge of the Talcher Camp. It has further been denied that the attendance of any person in the name of the 2nd Party-workman has been marked in the attendance register maintained by the CMPDI Limited and daily payment was

made to him at the rate of Rs. 45 per day. The documents attached by the 2nd party-workman as annexures to his statement of claim are self made documents and lack official sanctity. The allegations made against Shri Indrajit Banerjee, Officer-in-charge of the Talcher Camp with regard to the alleged termination of service of the 2nd Party-workman with effect from 7-8-2003 are false and misconceived. The nature of his purported job being perennial in nature is also false. The self styled statements of the 2nd Party-workman relating to conciliation proceeding and the reference are specifically resisted. His status as a workman is also denied. There is no valid industrial dispute under section 2(k) or 2-A of the Industrial Disputes Act. Hence the instant reference is untenable and un-sustainable in the eye of law. No Union in the name of the Orissa Coal Field Labour Union At./PO. Deulbera Colliery, Dist. Angul is operating in the establishment of the 1st Party-Management. Hence the authorization in favour of Thaddus Tiga, President is incompetent and un-entertainable under section 36 of the Industrial Disputes Act. The claim of the 2nd Party-workman having no merit and being untenable is liable to be rejected.

5. The 2nd Party-workman in his rejoinder has admitted that he was not issued any appointment letter. He was employed in the year 1992 and continued till 6-8-2003 as a casual/temporary worker. He has further stated that since the action of the 1st Party-Management is to be deemed as termination of service within the meaning of Section 2-A of the Industrial Disputes Act, he need not take help of Section 2(k) of the aforesaid Act. The name of the Officer-in-charge of Talcher Camp Office has been mistakenly written as Jagajit Banerjee which may be read as Indrajit Banerjee.

6. My learned predecessor has framed followig issues on the pleadings of the parties.

ISSUES

1. Whether the reference is maintainable ?
2. Whether the action of the management of Central Mines Planning and Design Institute Ltd. in relation to their Talcher Camp in terminating the services of Shri Umesh Chandra Gochhayat with effect from 7-8-2003 was just and proper.
3. If not, to what relief the workman is entitled ?

7. The 2nd Party-workman Shri Umesh Chandra Gochhayat has examined himself in evidence as W.W. -1 and relied on several documents marked as Ext.-1 to Ext. -10/1 Series to 10/24.

8. The 1st Party-Management has examined Shri Indrajit Banerjee as Management Witness No. 1 on affidavit and relied on two documents marked as Ext.-A and Ext.-B. The 2nd Party-workman was given opportunity to cross-examine him, but from that stage he absented himself from the court proceedings.

FINDINGS

ISSUE No. 2

9. The 2nd Party-workman has claimed himself to be a "workman" engaged directly by the 1st Party-Management as a casual labourer on 21-12-1992 and worked intermittently till the year 1994 and thereafter continued as such till his disengagement on 7-8-2003. In support of his contention he has filed photostat copies of the money receipts Ext.-9 series and duty allotment orders Ext.-10 series and some other documents including daily attendance statement, monthly payment statement and the statement indicating the names of officers with whom he had worked which have been marked as Ext.-1, 1/1 and 2 respectivley. The 1st Party-Management has denied the status of the 2nd Party-workman as "workman" but stated him to be a contract labour working under the contractor. The burden to prove that he is a "workman" under the 1st Party-Management lies on the 2nd Party-workman himself. The statements relating to attendance, payment of wages and working under different officers of the 1st Party-Management marked as Ext.1, 1/1 and 2 are admitted to be self prepared by the 2nd Party-workman whose contents have been denied by the 1st Party-Management. Hence these statements do not help the 2nd Party-workman to prove him to be a "workman" under the 1st Party-Management. As regards the photostat copies of money receipts Ext.-9 series they are in the name of one Bhubananda Samal which fact has also been admitted by the 2nd Party-workman. He also admits that Shri Bhubananda Samal was working as a contractor for supply of water. In his cross-examination he has also admitted that "all the casual labourers including myself were paid through money receipts like Ext.-9 series", but he has denied the fact that he was working under a contractor. Here a question arises that if he was not working under a contractor why payment to him was allegedly made through money receipts in the name of Shri Bhubananda Samal, Contractor. This fact indicates that he was working under the contractor. The documents relating to duty allotment orders Ext.-10 series do not show by whom these orders were issued. In his cross-examination the 2nd Party-workman Shri Gochhayat has stated that Ext.-10 series have been issued by the Drill Operator Shri M.K. Sahu etc. and in some of these duty allotment orders Ext.-10 series signature of Shri B. Behera, Drill Operator is appearing. But most of these allotment orders do not bear the signature of the duty allotment officer. It is to be noted here that these allotment orders only pertain to a period from August, 1994 to March, 1999 and only a few days of these years. Hence on the basis of these documents neither it can be said that he was a "workman" under the 1st Party-Management nor he had worked continuously for all these years under the 1st Party-Management. As per own admission of the 2nd Party-workman he was neither issued any appointment letter nor any termination or duty refusal letter. There is no proof

that he had worked under the 1st Party-Management continuously for 240 days in any of the years of his alleged engagement. M.W.-1 Shri Indrajit Banerjee, who was the officer-in-charge, CMPDI Camp, Talcher and had worked there from April, 1992 to August, 2005 has categorically stated in his sworn affidavit that Sri Umesh Chandra Gochhayat had never worked as a workman directly under the 1st Party-Management at any point of time. According to him Shri Umesh Chandra Gochhayat was a local person who along with few other persons had worked in a group at times on contract basis. Ext.-9 series are copies of some payments made to them on contract basis. It is false that Shri Gochhayat had demanded some advance salary from him and he abused and assaulted him and terminated his services with effect from 7-8-2003. Ext-10 series are perhaps a part of the relevant machine log book maintained by the Drill Operator on his own, but it does not contain the signature or endorsement of any Camp Officer. He has also filed copies of letter dated 27-11-2003 sent by the 2nd Party-workman and its reply dated 3-12-2003 sent by the 1st Party-Management to marked as Ext.-A and B respectively. In the reply Ext.-B the 2nd Party-workman was advised by the Management to approach the contractor for his grievance under whom he had worked. Thus it has been the specific case of the 1st Party-Management that the 2nd Party-workman was not working under him, but under the contractor as a contract labour. The 2nd Party-workman has not adduced any reliable and authentic evidence in support of his contention that he was a "workman" under the 1st Party-Management and was terminated from service by the 1st Party-Management with effect from 7-8-2003. When it is found that he was not a "workman" under the 1st Party-Management, his alleged termination cannot be termed and raised as Industrial Dispute. This issue is answered accordingly.

ISSUE No. 1

10. In view of the findings recorded under issue No. 2, the 2nd Party-workman has failed to prove himself to be a "workman" of the 1st Party-Management and therefore relationship of employee and employer exists between the two. Hence his alleged termination from service cannot be categorized as an Industrial Dispute. Therefore the reference is held to be not maintainable as alleged by the 1st Party-Management. This issue is accordingly decided in the affirmative and in favour of the 1st Party-Management.

ISSUE No. 3

11. From the above discussions it is deducible that the 2nd Party-workman is not entitled to any relief whatsoever claim.

12. The reference is answered accordingly.

Dictated & Corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 24 जुलाई, 2012

का.आ. 2673.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधनतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 31/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-07-2012 को प्राप्त हुआ था।

[सं. एल-12012/224/2004-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 24th July, 2012

S.O. 2673.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India, and their workman, which was received by the Central Government on 24-07-2012.

[No. L-12012/224/2004-IR(B-I)]
RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 12th July, 2012

PRESENT : A.N. Janardanan, Presiding Officer

Industrial Dispute Case No. 31/2010

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their Workman]

BETWEEN :

Sri S. Sanjeevi : 1st Party Petitioner

Vs.

The Dy. General Manager : 2nd Party/Respondent
State Bank of India,
9-A, Rajaji Nagar, 3rd Street,
N.K. Road, Tanjore-6

APPEARANCES:

For the 1st Party/ Petitioner : M/s. Balan Haridas,
Advocates

For the 2nd Party/ Management : M/s. T.S. Gopalan & Co.,
Advocates

AWARD

The Central Government, Ministry of Labour and Employment vide Order No. L-12012/224/2004-IR(B-I) dated 7-6-2010 has referred the dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of State Bank of India, Trichy in terminating the services of Sri S. Sanjeevi is legal and justified? If not, what relief he is entitled to ?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 31/2010 and issued notices to both sides. Both sides entered appearance through their Advocates and filed their Claim and Counter statement as the case may be.

3. Claim Statement contentions briefly read as follows :

Petitioner was engaged as a Messenger from May 1982 onwards by the Respondent/Bank in various branches of the Trichy module. The different period of his engagement are detailed in the annexure of the Claim Statement. Though he worked continuously Bank gave him deliberate break to deny regularization, though as a temporary messenger he was doing the work of regular messenger by doing all the jobs. He is a workman. In 1989 he had been called for an interview for the post of Messenger. He was empanelled with S. No. 224 in the select list. His juniors were given permanent employment with all benefits but he was not given regular employment. Even thereafter he had been continuously engaged from May 1982 to October 1999 but for the deliberate breaks given by the Bank. He was denied employment after October 1999 though his juniors continued. He was under a bonafide impression of getting employment as per the waiting list. He was discriminated by the Bank by regularizing even his juniors. The action is illegal, arbitrary, discriminatory and against principles of natural justice. It is again violative of Section-25G and Section-25H of the ID Act. Petitioner having worked for more than 480 days within a period of 24 calendar months is deemed to be a permanent employee under Section-3 of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981. Respondent/Bank unilaterally entered into a settlement under Section-18(1) of the ID Act with its puppet unions and based on it seniority list of temporary messengers was drawn in an arbitrary manner which together with the settlement had no binding force on the petitioner and persons similarly situated. To similarly situated persons orders of reinstatement have been given by this Tribunal. The

reference is occasioned as per order of High Court owing to initial decline by the Government to refer the same. Petitioner is to be reinstated as a regular messenger with back wages and all other attendant benefits.

4. Counter Statement averments briefly read as follows :

In order to consider the claims of all eligible temporary employees who had to be appointed and appointed due to business exigencies and on account of emergent needs, against leave vacancies, without there being any actual permanent vacancy or post and due to innumerable claims having existed for permanent appointment to them the first settlement dated 17-11-1987 was entered into under the ID Act read with Rules-58 of ID (Central) Rules, 1957 to consider the claims of eligible temporary employees for permanent employment as one-time measure. Under the settlement an embargo was made for the temporary engagements except in the cadre of sweepers and watch and ward staff which was permitted on restrictive basis. Accordingly, future temporary engagement was prohibited. In case of exigencies engagements were permitted only from and out of the existing wait listed panel to be drawn up. Hence the petitioner was engaged after 1991 as a waitlisted candidate which will not entitle for any rights except under the settlements. Petitioner is estopped from claiming otherwise. The second settlement dated 16-7-1988 modified the position to the effect that vacancies arising during the year 1987 to 1992 were to be made available to temporary employees to be appointed under the first settlement. Third settlement dated 27-10-1988 included casual workmen or daily wagers for being considered against the vacancies arising during the year 1988 to 1992. The combined effect of the three settlements is that the vacancies from 1987 to 1992 should be made available to temporary employees panel and vacancies arising during 1988 to 1992 should be made available to casual or daily wagers panel. Fourth settlement dated 9-1-1991 which amplified Clause-7 of the first settlement as modified by second and third settlements that interviews for permanent appointment would be conducted by selection committee separately for temporary employees and for daily wagers and separate (two) waitlist panels to be prepared i.e. (1). Penal for temporary employees will be used for filling existing vacancies or those which may arise upto December 1994. Thereafter waitlist will stand lapsed and remaining candidates will have no claim whatsoever who have been considered for permanent appointment in the Bank. (2). Panels for daily wagers will be used for filling vacancies which may arise in 1995 and upto December

1996. Thereafter these will stand lapsed and the remaining candidates in the waitlist therein will have no claim whatsoever for being considered for permanent appointment. Factually only one waitlist was drawn as per the first settlement and the said waitlist was drawn as per the length of aggregate temporary service put in by each employee and consequently those who have completed 240 days were initially appointed and thereafter depending upon the length of service i.e. the more number of days the temporary employees worked, the high their seniority position/ranking was in the wait list panel and they were subsequently appointed. The waitlist for the casuals was not drawn in view of the interim order in WP No. 7832 of 1991. In Clause-6 of the Minutes of Conciliation Proceedings held on 9-6-1995 before the Regional Commissioner of Labour (Central), Hyderabad it is agreed that in the matter of absorption of temporary employees the aforesaid four settlements will be implemented after arriving at the number of messengerial posts to be created in terms of the settlement and the strength of the messengers was to be arrived at as on 31-12-1994 and the panels of temporary employees/daily wagers/casual labour should be kept alive upto March, 1997 and the vacancies to be filled from both the lists concurrently. As per the fifth settlement dated 30-7-1996 in the wake of the conciliation proceedings the panels of temporary employees and of daily wagers, both were agreed to be kept alive upto 31-3-1997 for filling up vacancies arising upto 31-12-1994 and thereafter w.e.f. 1-4-1997 new norms were provided for the appointment of the messengers and the waitlist was agreed to lapse as on 31-3-1997. Such waitlisted candidates 652 in number, for Trichy module and the appointments were made from the waitlist upto waitlisted Candidate No. 212 out of 652 and the waitlist lapsed as on 31-3-1997 after filling up vacancies as on 31-12-1994, on exhausting regular sanctioned vacancies. The remaining waitlisted candidates were not appointed as there were no sanctioned vacancies and most of them raised Industrial Disputes which were dismissed Writ Petitions preferred were allowed against which Respondent/Bank filed SLPs before Supreme Court which granted stay on 13-11-2009. Petitioner did not initiate action for the next 9 years though his engagement ceased during 1996. Hence the ID is barred by latches in the absence of valid reasons for condonation of inordinate delay. After the lapse of the aforesaid scheme the bar of future engagements was in force. As there was excess staff Respondent implemented Voluntary Retirement Scheme and right sized its strength of employees. That the petitioner worked from 1982 onwards in the branches of Trichy Zone as in the work details and

calculations given in the Claim Statement is denied. Admitted case of the petitioner is that he worked below 90 days during 1982, 1983 and 1987. That there was compulsory break in the service of the petitioner is meaningless. He was employed in leave vacancies. The nature of his work cannot be said to be similar with others. It is denied that he worked for 158 days in 1996, 217 in 1997, 234 days in 1998 and 172 days in 1999. Though petitioner was empanelled as Candidate No. 224 after interview the said waitlist having lapsed on 31-3-1997 as per the fifth settlement he is estopped from claiming otherwise and by raising ID. It is false that his juniors were employed with all benefits from the waitlist. It is false that he had been continuously engaged from May 1982 to October 1999. It is false that his juniors and casuals were regularized. There is no violation of Section-25G and Section-25H. He did not work for 240 days or 480 days in 12 calendar months or 24 calendar months. Section-25F is not attracted. His non-engagement in 1986 is not termination. His engagement after 1996 on the premises that he was waitlisted is an engagement under Section-2(oo) of the ID Act and lapsed as per fifth settlement on 31-3-1997. The TNIECP SW Act, 1981 will not apply to the Respondent/Bank under which the Tribunal is not an authority to enjoy jurisdiction since the petitioner is not in employment too.

5. Points for consideration are :

- (i) Whether the termination from service of Sri S. Sanjeevi is legal and justified ?
- (ii) To what relief the concerned workman is entitled?

6. Evidence consists of the oral evidence of WW1 and Ex. W1 to Ex. W7 on the petitioner's side and the oral evidence of MW1 and Ex. M1 to Ex. M12 on the respondent's side.

Points (i) & (ii)

7. Heard both sides. Perused the pleadings, documents and evidence. Both sides argued fully in terms of their respective contentions in the pleadings with reference to documents, evidence and records. On behalf of the petitioner, reliance was placed on various rulings of the Apex Court and the High Courts in :

- WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION VS. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION (CDJ-1985-SC-200) which quotes Section-18 of Delhi Shops and Establishment Act, 1954 as below "Section 18 No deduction shall be made from the wages of any employee on account of

the close day under S.16 or a holiday granted under Section-17 of this Act. If an employee is employed on a daily wage he shall none the less be paid his daily wage for the holiday and where an employee is paid on piece rates, he shall receive the average of the wages received during the week".

- DEVINDER SINGH VS. MUNICIPAL COUNCIL, SANAUER (CDJ-2011-SC-407) wherein Supreme Court held "13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section-2(s) of the Act".

"22. We may now advert to the impugned order, a careful analysis thereof reveals that the High Court neither found any jurisdictional infirmity in the award of the Labour Court nor it came to the conclusion that the same was vitiated by an error of law apparent on the face of the record. Notwithstanding this, the High Court set aside the direction given by the Labour Court for reinstatement of the appellant by assuming that his initial appointment/engagement was contrary to law and that it would not be in public interest to approve the award of reinstatement after long lapse of time. In our view, the approach adopted by the High Court in dealing with the award of the Labour Court was ex facie erroneous and contrary to the law laid down in Syed Yakoob v. K.S. Radhakrishnan AIR (1964) SC 477, Swaran Singh v. State of Punjab (1976-2-SCC-868) PGI of Medical Education and Research, Chandigarh v. Raj Kumar (2001) 2-SCC 54, Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675 and Shalini Shyam v. Rajendra Shankar Path (2010-8-SCC 329)".

- JUDGMENT OF HON'BLE HIGH COURT OF MADRAS DATED 1408.2008 IN WRIT APPEAL 912 OF 2001 (V. KANDASAMY VS. (I) THE MANAGEMENT, KOVILPATTI AGRICULTURAL PRODUCERS CO-OPERATIVE MARKETING SOCIETY AND (II) ANOTHER) IT WAS HELD "Before a Division Bench of this Court in the President, Sangam Co-operative Urban Bank Ltd., vs. The Presiding Officer, Labour Court, Madurai [1996 (II) L.L.J. 216], when similar argument was advanced on behalf of the Management of Srirangam Co-operative Urban Bank Ltd., that the engagement of workman was not made in accordance with law, having noticed the provisions of Section 2(oo)

and 25-F of the Industrial Disputes Act, the Division Bench of this Court held that Section-25F does not make any difference as to whether the appointment has been made in accordance with law or not but the factum of employment is relevant and not the legality or otherwise of it".

- MAHARASHTRA SRTC AND ANOTHER VS. CASTERIBE RAJYA PARIVAHAN KARMACHARI SANGHATANA (2009)-2-SCC-L&S-513) wherein Supreme Court held "32. The power given to the Industrial and Labour Courts under Section-30 is very wide and affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule-IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer".
- HARJINDER SINGH VS. PUNJAB STATE WAREHOUSING CORPORATION (2010-3-SCC-192) wherein Supreme Court held "16 Therefore, it was not open for the Corporation to contend that the appellant had not completed 240 days' service. Moreover, it is settled law that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of "last come first go" without any tangible reason".
- 8. While so on behalf of the Respondent reliance was placed on the decision of the Apex Court in:
- JAGBIR SIGH VS. HARYANA STATE AGRICULTURE MARKETING BOARD AND ANOTHER (2009-IV-LLJ-336-SC) wherein it held "9.9 It is now well settled by reason of a catena of decisions of this Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact".

9. The main arguments on behalf of the petitioner are that to prove the petitioner having worked 240 days in a calendar year Sundays are also to be included. When such is the case petitioner could be taken to have worked 240 days in a calendar year preceding his termination. The Respondent having withheld relevant documents from 1982 to 1986 which if and when produced would have proved the petitioner's claim. Adverse inference is to be drawn against the Respondent and conclusion is to be drawn that he worked for, or more than 240 days in a calendar year. Claim being not for regularization but being for reinstatement only, the decision in the Uma Devi's case is not to be applied. The reference having been occasioned consequent to the order of the High Court question of delay is to be treated as wiped off. Again delay and latches are not to afford as grounds in industrial adjudication. Question of backdoor entry even if proved is not relevant in labour laws and source of recruitment is immaterial. When Saturdays and Sundays are included the petitioner would have completed 240 days in a calendar year. MW 1 has admitted that Saturdays and Sundays have not been included for some periods. Sundays are also to be considered as a paid holiday. There is unfair labour practice done on the issue of regularization of the petitioner's juniors, the details of which have not been furnished by the Respondent. Silence is not a virtue where there is a duty for the Banks to speak.

10. Contra arguments on behalf of the Respondent are that the petitioner has not worked for 240 days in any 12 calendar months. Section-25F of the ID Act is not applicable. Here the petitioner is not entitled to ordinary relief under labour legislations. His is a backdoor entry. Dispute is raised after long delay and latches. In view of the panel in which his S. No. is 224, having lapsed after appointing 212 waitlisted persons leaving 440 persons not entitled, the petitioner has now come with the claim for reinstatement without his having put in 240 days in work during any calendar year. Petitioner has not made out a case for reinstatement which is usually not automatic. In a case in which one is entitled to succeed either reinstatement or compensation depending upon the facts and circumstances of each case is to be given. In the case of irregular entry no reinstatement is to be granted. For casual employees Sundays cannot be reckoned unless they worked preceded and succeeded by working days on which also they worked. Casual employee cannot be considered for permanent posting.

11. The diametrically opposite stand on either side as to the number of days worked by the petitioner in a calendar year, which according to petitioner is that he worked for 240 days in a calendar year when Sundays are also included which whereas according to the Respondent is that, the petitioner has not worked for 240 days in 12 calendar months. According to Respondent for casual employees Sundays cannot be reckoned unless they

worked preceded and succeeded by working days on which also they worked. Respondent withheld relevant documents from 1982 to 1986 which if produced would have proved or disproved that the petitioner's claim of having worked for not less than 240 days is true. But this proposition could be found to be belied by the fact that even from the statement of the petitioner there is no case that he worked for 240 days in 1996, 1998 and 1999. From the evidence of MW 1-Witness for the Management it is seen that for some relevant periods Sundays have not been included for computing the total number of days worked by the petitioner in a given period of 12 calendar months. A supra cited decision goes to show that Sundays are also to be considered as paid holiday. But according to the Respondent for reckoning Sundays the employee should have worked on such Sundays preceded and succeeded by working on the such working days. Now the question is whether the petitioner has worked for 240 days during any given 12 calendar months preceding termination of the petitioner. On this aspect though the initial burden is on the petitioner in which he has failed to prove that he worked for 240 days, merely for that reason alone it is not to be taken for granted that he is not entitled to succeed. The withholding of relevant documents by the Respondent from 1982 to 1986 is an enabling factor to draw adverse inference against the Respondent to draw the conclusion that the petitioner worked for or more than 240 days in any calendar year during the period. When the fact that paid Sundays are also to be considered and reckoned for computation of number of days worked for the computation of 240 days as the number of days worked during a particular calendar year, the data forthcoming on record from either side when evidently are not inclusive of such paid Sundays as well it is well to presume that when such paid Sundays are also included the petitioner would be taken to have worked for not less than 240 days in a calendar year. I am fortified in holding so in view of the testimony of MW 1 in the box that Sundays have not been included in some of the details as to the number of days worked by the petitioner furnished by them during some periods. So much so it is only to be concluded that the petitioner has worked for not less than 240 days in any of the 12 calendar months preceding his termination. It is a settled law that when both sides adduce evidence burden of proof as to on whom lies in a given case loses much of its significance. Though initial burden is upon the petitioner to prove it in as much as the Respondent has also stepped in to lead evidence touching upon the issue which is the main pivot for the determination of the controversy, the burden or the role of the Respondent is equally onerous. When the equal duty of proving the fact by either side is not complied with the required efficacy then a decision is to be left to rest on preponderance of probabilities and logical conclusions based on proper inferences and presumptions permitted to be drawn statutorily too under the Evidence Act. I am also justified in holding that adverse

inference can be drawn against the Respondent since it has withheld relevant documents from 1982 to 1986 as rightly argued by the learned counsel for the petitioner in concluding that the petitioner has worked for not less than 240 days. Here again the ID Act being a benevolent legislation in favour of the workman, when two views are possible, the view that favours the workmen is to be preferred. Decision in Uma Devi's case is distinguishable on facts since the claim here is not for regularization but is for reinstatement. While the petitioner claims to have been discriminated by considering his juniors for reinstatement regularization that fact does not stand substantiated. The Respondent cannot be beset with an liability of producing details of any such juniors, as to who they are, when having not been initially furnished by the petitioner. The argument on behalf of the Respondent that in view of the various settlements given rise to commencing from the first to the fifth under which the petitioner has been a wait listed candidate for permanent employment, petitioner is estopped from claiming otherwise as in the present ID cannot hold good because it would be in denial of a statutory right to which he would be entitled otherwise if he satisfies the terms and conditions under which he is entitled to maintain such statutory right. It cannot be said that the petitioner is not entitled to the legal and ordinary relief under the labour legislations. It cannot also be said that casual employees cannot be considered for permanent posting. The status as a backdoor entry personnel also cannot be a taboo for any legal claim of the petitioner as held in the decisions cited supra. Petitioner also cannot be ascribed to have approached this forum with the claim merely owing to the lapse of the panel in which he was with S. No. 224 after appointing 212 waitlisted persons leaving 440 persons not entitled to permanent appointment because he himself has made it clear that he was under the legitimate expectation of being made permanent as a waitlisted candidate. The lacunae of delay and latches on his part in making the claim after a lapse of years, say 9 years, is therefore, condonable and is only to be condoned. The said delay is also worthy of being reckoned as wiped off in view of the fact that the reference was made to this Tribunal by the Government pursuant to the order of the Hon'ble High Court of Madras. Backdoor entry is not relevant in labour laws and source of recruitment is immaterial as held in the decisions cited above. In view of all these considerations it is well to find that the termination of the petitioner from service is illegal and is in violation of Section-25F of the ID Act. Therefore his termination is set aside. The next question is what shall be the consequence of setting the termination aside. It is argued on behalf of the Respondent that in a case where termination is set aside the reinstatement is not automatic. It has to depend upon facts and circumstances of each case. It is further argued that in case of an irregular entry no reinstatement is to be granted. The said allergy to irregular appointment no longer holds good as could be found from the discussion

in the ruling cited above. Therefore, I am of the view that with the setting aside of the termination of the petitioner, though his reinstatement is not to be automatic, in view of the fact that he having had worked for quite long years and happened to be waitlisted for permanent appointment, which panel having lapsed due to a coincidence to ill-luck and not due to his own fault and he is earnestly desirous of employment in preference to any compensation and has been clamouring for appointment by approaching the various fora including the Apex Court of the State for mitigating his grievances or even for a reference of this dispute to this Tribunal, his zealous desire of coming into employment should be met with a magnanimous approach of providing employment to him rather than cornering him to sit unemployed with some succour of a sum by means of compensation. The proposition that if the petitioner is reinstated the other 440 persons in the lapsed waiting list will put forward clamour for their employment is an alien consideration because in the absence of any claim or proof of their having become entitled to any equal treatment with the petitioner by raising any ID such claim cannot have any leg to stand. Therefore he is to be reinstated into service forthwith with continuity of service and all attendant benefits with 20% back wages.

12. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th July, 2012).

A.N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the 1st Party Petitioner: WW1, Sri S. Sanjeevi

For the 2nd Party : MW 1, Sri OPG Selvaraj Management

Documents Marked :

From the Petitioner's side

Ex.No.	Date	Description
Ex. W1	05-01-1979	Employment Registration Card
Ex. W2	22-04-1982	Interview Call Letter
Ex.W3	03-05-1982	Information about selection
Ex. W4	08-05-1985	Interview Call Letter
Ex. W5	16-04-1987	Service Certificate
Ex. W6	—	Calculation summary for the period the petitioner worked
Ex. W7	—	Letter issued by the Respondent

From the Management's side

Ex.No.	Date	Description
Ex.M1	-	Statement of number of days worked by S. Sanjeevi, Petitioner between May 1996 and October 1999.
Ex. M2	14-03-1992	Wait List
Ex. M3	17-11-1987	First Settlement
Ex. M4	16-07-1988	Second Settlement
Ex. M5	09-01-1991	Third Settlement
Ex. M6	27-10-1988	Fourth Settlement
Ex. M7	09-06-1995	Minutes of RLC, Hyderabad
Ex. M8	30-07-1998	Fifth Settlement
Ex. M9	1996-1997	Details of days worked
Ex. M10	1997-1998	Details of days worked
Ex. M11	1998-1999	Details of days worked
Ex. M12	24-10-1998	Circular issued by the Respondent to all branches DO/PER/No. 55 dated 24-10-1998

नई दिल्ली, 25 जुलाई, 2012

का.आ. 2674.—औद्योगिक विवाद अधिनियम, 1947 (1947 का, 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पोर्ट ब्लेर के पंचाट (संदर्भ संख्या 17/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/250/2005-आई आर (बी-1)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 25th July, 2012

S.O. 2674.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2006) of the Labour Court, Port Blair as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 25-7-2012.

[No. L-12012/250/2005-IR (B-I)]
RAMESH SINGH, Desk Officer

ANNEXURE

**IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT ANDAMAN AND NICOBAR
ISLANDS, PORT BLAIR**

I.D. Case No. 17/2006

PRESENT:

Shri S. Sengupta, Judge Labour Court
Andaman and Nicobar Islands Port Blair

Shri Mannual Ekka : First Party

vs.

Assistant Manager, SBI, : Second Party
Regional Officer, Port Blair

Dated, the 9th July, 2012

JUDGEMENT/AWARD

In exercise of the power conferred by clause (d) of sub-section 1 and of sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 read with notification No. L-12012/250/2005-IR (B-1) dated 24-7-2006, this instant schedule reference was made by Ministry of Labour, Government of India, for adjudication as to :

1. "Whether the plea of management of State Bank of India holds good that the workman has no right to continuance in the service as his services were utilized by the bank only against have vacancies arising out of leave taken by the permanent staff even though he had served the management for a reasonable period is justified ?"

2. If not, to what relief the workman concerned is entitled to ?

After service of notice, both parties of this proceeding entered their appearance. 1st party (workman) Mannual Ekka files his statement of demand and 2nd party (Assistant General Manager. SBI, Port Blair) also filed written objection.

Crux of the statement of demand of the 1st party is that, 1st party was engaged by the Management of State Bank of India, at Nancowri Branch as Daily Rated Mazdoor, (Sweeper-cum-canteen boy) from 12th April, 1996 to 1st March, 2001 and again 1st March, 2002 to 2nd March, 2005. He served under the 2nd party at different point of time mostly with the break as DRM, (Sweeper-cum-canteen boy) for continuously more than 240 days and suddenly his services was terminated by the 2nd party illegally without any notice. So, 1st party prays for award to the effect that the said action of the 2nd party regarding termination of his services is liable to the set aside.

2nd party by filing written objection prayed for dismissal of the prayer of the 1st party, denying all the material allegations made by the 1st party, and stated, inter alia that the 1st party was engaged on Daily Wages Basis to do menial work in Nancowri Branch as and when required basis and that he neither completed 240 days during the period of twelve calendar year nor he was an employee of bank but engaged by Local Implementation Committee of bank staff and so 1st party does not come under the

provision of Industrial Disputes Act. However, the party prays for dismissal of the prayer of the 1st party.

DECISION WITH REASONS

In this proceeding the 1st party adduced his evidence (examination in chief) by way of affidavit sworn by him as per provision U/o 18 rule 4 of Code of Civil Procedure. It is quite peculiar to say that during the entire evidence stage of this proceeding before this Tribunal, none has come before this Tribunal to adduce evidence from the side of 2nd party or to cross examine the 1st party. So the entire fact stated in the written objection of the 2nd party remains unchallenged and uncorroborated by testimony. On the other hand the 1st party adduced his evidence (examination in chief) by affidavit U/o 18 rule 4 of Code of Civil Procedure. In his said evidence, 1st party has deposed his entire case before this Tribunal. I fail to understand what prevented the 2nd party to come before this Tribunal to adduce evidence in support of his written objection and/or to cross examine the 1st party (workman) challenging his case. Even inspite of service of summon to produce documents, no document supporting the statements of the written objection have been produced from the side of 2nd party in this proceeding for the reason best known to him. This attitude of the 2nd party creates doubt in my mind about the veracity of the statement made by the 2nd party in his written objection.

In this proceeding 1st party submitted one certificate issued by the Branch Manager, State Bank of India, certifying that the 1st party (Mannual Ekka) was engaged on daily rated basis (canteen boy and sweeper) from different part of year from 1997 to 2001. This certificate was admitted into the evidence of 1st party and it was marked as Exhibit-1. 1st party also produced another certificate issued by Branch Manager, State Bank of India, Nancowri Branch, certifying that 1st party workman was engaged on daily wages basis as canteen boy (for 114 days) and sweeper (for 210 days) for some part of the year from 1996 to 1997. This certificate was also admitted into the evidence and it was marked as Exhibit-2. 1st party also produced copy of Failure report dated 29-11-2009, in connection with this matter.

Considering the evidence of 1st party, both oral and by documentary, as stated above it appears that 1st party has corroborated his case in his evidence and no iota of evidence came from the side of the 2nd party in this proceedings before this Tribunal. I do not find any good reason to disbelieve the unchallenged testimony of the 1st party.

According to the provision laid down in sub-section (II) of the Section 25B in clause (2) of the Industrial Disputes Act 1947 'a workman shall be said to be in continuous service for a period of 240 days'.

Section 25B of the Industrial Disputes Act 1947, lays down the condition precedent of retrenchment of the workman.

On perusal of the statement of demand of the 1st party and his evidence both oral and documentary, (particularly Exhibit 1 and 2), it appears that this 1st party has served more than 240 days in a calendar year, under the management of the 2nd party.

Therefore on careful consideration of the statement of demand by the 1st party and his evidence, both oral and documentary, and also considering the relevant provisions of law, as quoted above, I find that the case of the 1st party workman is established and so I have no hesitation to hold that the prayer as sought for by the 1st party in his statements of demands is quite legal and justified.

Hence, it is

AWARDED

That the order dated 5-3-2005 action taken by the 2nd party (Assistant General Manager, SBI, P/B) terminating the 1st party (Mannual Ekka) from his service as Daily Rated Mazdoor, was not according to law and so it is set aside.

1st party applicant be reinstated in his original service as Daily Rated Mazdoor, under the 2nd party (Assistant General Manager, SBI, P/B), with effect from the date of this award.

Copy of this award be sent to the Ministry of Labour, Shram Shakti Bhawan, Government of India, for information and necessary action and also for publication in the official gazette as per rule.

S. SENGUPTA, Presiding Officer

नई दिल्ली, 25 जुलाई, 2012

का.आ. 2675.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम स्थायात्रय, भगपुर के पंचाट (संदर्भ संख्या 71/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-7-2012 को प्राप्त हुआ था।

[सं. एल-22012/385/2004-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 25th July, 2012

S.O. 2675.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 71/2005)

of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Ballarpur O/C Mine of Western Coalfields Ltd., and their workmen, received by the Central Government on 25-7-2012.

[No. L-22012/385/2004-IR (CM-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/71/2005

Dated : 13-7-2012

PARTY NO. 1

The Sub Area Manager,
Post : Ballarpur,
Distt. Chandrapur (MS)

Versus

PARTY NO. 2

Shri Lomesh Khartad,
General Secretary,
Rashtriya Colliery Workers Congress,
Dr. Ambedkar Nagar,
Post : Ballarpur,
Distt. Chandrapur

AWARD

Dated, the 13th July, 2012

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri S. M. Ambatkar, for adjudication, as per letter No. L-22012/385/2004-IR (CM-II) dated 26-8-2005, to CGIT-cum-Labour Court, Jabalpur for adjudication with the following schedule :

"Whether the action of the management in relation to Ballarpur Sub Area of WCL in transferring Sh. S. M. Ambatkar, E P Fitter, Ballarpur OCM to Gouri OCM vide office order No. Wekoli/Ballarpur Khetra/ Mukhya Mines Prabhandak/Adesh/3896 dated 8-8-2004 is legal and justified ? If not, to what relief is the concern workman entitled ?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "Rashtriya Colliery Mazdoor Congress" ("the union" in short) filed

the statement of claim, on behalf of the workman, Shri S. M. Ambatkar, ("the workman" in short) stating that the transfer of the workman dated 8-8-2004 is illegal and the workman is entitled to for his transfer to Ballarpur OCM.

3. The management of WCL, ("party no. 1" in short) filed the written statement pleading inter-alia that the workman was not entitled for the transfer to Ballarpur OCM as the transfer order dated 8-8-2004 is legal and justified .

4. During the pendency of the reference, advocate for the workman on 27-7-2011 filed an application stating that neither the workman nor the union is interested to proceed with the reference and as such, the case be treated as withdrawn. However, order was passed to file an application signed either by the workman or the union representative in that respect.

5. On 13-7-2012 an application being signed by the union representative was filed on behalf of the workman stating that the workman has already been transferred back to Ballarpur OCM and as such, the workman doesn't want to contest the case. Prayer was made to close the case. Copy of the application was served on the advocate for the party no. 1, who made endorsement of "no objection" on the application itself.

As neither the workman nor the union is interested to proceed with the case and as the workman has already been re-transferred to Ballarpur OCM as mentioned in the application dated 13-7-2012, it is necessary to pass a "no dispute" award. Hence, it is ordered :

ORDER

The reference may be treated as "no dispute" award. The applications filed by the advocate for the petitioner dated 27-7-2011 and the application filed by the union representative dated 13-7-2012 are made part of the award.

J. P. CHAND, Presiding Officer

BEFORE THE HONOURABLE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NAGPUR

Reference Case No. CGIT/NGP/71/2005

Sub Area Manager, Ballarpur Open Cast Sub-Area W.C.L	: Employer
--	------------

Versus

Their Workman

(Case of Sri-S. M. Ambatkar) : Union/Workman

**Humble Application of Union/Workman to Withdraw
Close the Case**

1. It is humbly submitted that the workman has been transferred back from Gauri open cast to Ballarpur open cast mine and has joined.

2. The management in its written statement has also continued the same.

3. That since the workman has been transferred back he does not want to contest the case further. The workman is also handicapped due to injuries and this transfer to G.O.C.M. has given relief to him.

4. That the union as well does not want to follow up any further.

PRAYER

In view of above it is prayed to close the case for which the workman/union will pray as in duty bound.

Place : Ballarpur (Chandrapur)

Date : 24-6-2012

**BEFORE THE HONOURABLE PRESIDING
OFFICER CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, NAGPUR**

Reference Case No. CGIT/NGP/71/2005

Management of W.C.L.

Ballarpur Area : Employer

Vs.

Their Workman

(Case of Sri-S. M. Ambatkar) : Workman

**Humble Application of Workman/Party No. 2
For Withdrawing the Case**

The Party No. 2 humbly submits as under :

1. That the workman has met with accident and his both the legs have been fractured. He has got treatment.

2. That he is however attending duties going by vehicle meant for disabled person.

3. That in the above circumstances he is not willing to pursue this case any further.

4. That the General Secretary Sh. Lomesh Maroti khartad has also intimated me overphone today that the case may be withdrawn.

PRAYER : Accordingly

Nagpur

Date : 27-7-2011

K. K. YADAVA, C.F.A.

नई दिल्ली, 25 जुलाई, 2012

का.आ. 2676.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. आर आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (आई डी संख्या 67/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-7-2012 को प्राप्त हुआ था।

[सं. एल-42012/100/2002-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 25th July, 2012

S.O. 2676.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial Dispute between the management of Forest Research Institute, Lane No. 2, and their workmen, which was received by the Central Government on 25-7-2012.

[No. L-42012/100/2002-IR(CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

**BEFORE SRI RAM PARKASH, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, KANPUR**

Industrial Dispute No. 67 of 2006

The President,
FRI Mazdoor Union,
Office Local Bus Stand,
Dehradun

Vs.

The Director,
Forest Research Institute,
Dehradun.

AWARD

1. Central Government, Mol, New Delhi vide Notification No. L-42012/100/2002-IR(CM-II) dated 11-7-2006, has referred the following dispute for adjudication to this tribunal :

2. Whether the action of the management of FRI in terminating the services of Sri Rajeev Bharthwal is legal and justified ? If not to what relief the workman is entitled to ?

3. The case of the claimant is that on the basis of vacancy notified by the management on the notice board he was appointed on the post of accounts on 1-5-1999. He worked till 15-11-2001. His work was supervised by the

opposite party. Opposite party used to pay him his wages at Rs. 2350. The opposite party orally refused him to perform his duties with effect from 15-11-2001. On the basis of above has prayed his reinstatement in the service of the opposite party.

4. Opposite party has denied the claim of the workman on the ground that there was no relationship of master and servant between the claimant and the opposite party and that the claimant was neither appointed against any sanctioned and regular post by the opposite party nor he was ever issued any appointment letter in his name. It is also alleged that the workman was working through a contractor who had issued him appointment letter with which the opposite party has no concern. It is also pleaded that in the opposite party under the instructions of Government of India, appointment has been banned.

5. Rejoinder has also been filed wherein nothing new has been pleaded except reiterating the facts already pleaded by him in his claim petition.

6. The claimant has also filed certain documents along with the claim statement which will be discussed at the appropriate stage if necessity arose. Opposite party has also filed some documents and they will also be considered at the appropriate stage.

7. Heard at length the contesting parties and have also considered the evidence on record.

8. Claimant has produced himself in evidence as WW-1 in support of his claim, but after recording examination in chief several opportunity were adduced by the tribunal for his appearance to have an opportunity to the opposite party to cross-examine him on his evidence but he failed to appear before the tribunal for the reasons best known to the claimant.

9. Thereafter the opposite party has also adduced their evidence in support of their claim and examined one Sri Rajendra Kumar Manchanda as WW-1 who is an establishment accounts officer, he has stated on oath that the claimant was never appointed or posted directly by the opposite party and that he was never paid salary or wages by the department, whereas he was engaged or appointed by one contractor Rajeev Bharthwal, Eagle Hunter Solution Private Limited Dehradun. Claimant was given full opportunity to cross-examine the witness but he did not turn up, therefore, his statement is un-rebutted. As such there is no reason to disbelieve his evidence and claimant has not supported his pleadings in evidence, therefore, the evidence of the claimant cannot be said that from it the claimant has succeeded in proving his case before the tribunal. Even the workman has not appeared before the tribunal at the stage of argument.

10. A perusal of the reference order reveal that the date of termination of the service by the opposite party has not been mentioned; therefore, according to the settled legal position such reference has been regarded as vague reference.

11. Therefore, at any rate, as the workman has failed to prove his case and pleadings by giving positive evidence, he cannot be held entitled for any relief what to say grant of reinstatement. Accordingly reference is answered against the workman and in favour of the opposite party.

RAM PARKASH, Presiding Officer

नई दिल्ली, 25 जुलाई, 2012

का.आ. 2677.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डीयूटसच बैंक ए जी, मुम्बई शास्त्रा, कोडाल हाऊस के प्रबंधतांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 78/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/450/2001-आई आर (बी-I)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 25th July, 2012

S.O. 2677.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Deutsche Bank AG, Mumbai Branch, Kodal House, and their workmen, which was received by the Central Government on 25-7-2012.

[No. L-12012/450/2001-IR (B-I)]
RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO.1, KARKARDOOMA
COURTS COMPLEX, DELHI**

ID No. 78/2001

Shri Rajnish Anthwal
R/o C-3A/112-A,
Janakpuri,
New Delhi-110058

.... Workman

Vs.

The Chief Operating Officer,
Deutsche Bank AG,
Mumbai Branch, Kodal House,
222, Dr. D. N. Road,
Post Box No. 1142, Fort,
Mumbai-400001

.... Management

AWARD

A clerk was appointed in its Corporate and Real Estate Services Division, New Delhi, by Deutsche Bank (in short the bank) vide letter dated 28-2-2000. The employee joined his duties on 16-3-2000 at New Delhi. As per terms contained in letter of appointment, he was to remain on probation for a period of six months from the date of joining service. It was further stipulated therein that his confirmation at the end of probationary period was subject to his performance being to the satisfaction of his employer. He was not informed of his confirmation after expiry of period of six months. On the other hand, on 11-1-2001 it was conveyed that his period of probation has been extended up to 31-3-2001. On 31-3-2001 he was advised that his services stand terminated effective the close of working hours that day. It lead the employee to raise an industrial dispute before the Conciliation Officer. Since conciliation proceedings ended into a failure, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12012/450/2001-IR (B-I) New Delhi, dated 5-2-2008, with following terms :

"Whether the action of the management of the Chief Operating Officer Deutsche Bank, AG Mumbai in terminating the services of Shri Rajneesh, Ex-Clerk-staff w.e.f. 31-3-2001 before the expiry of his period of probation is justified ? If not to what relief he is entitled ?"

2. Claim statement filed by the clerk, namely, Shri Rajneesh Anthwal before the Conciliation Officer, was presented before the Tribunal, along with documents. The said claim statement was treated as statement of claim filed before this tribunal. In that document the claimant pleaded that he was appointed as clerk-staff in Corporate and Real Estate Service Division, New Delhi, of the bank against a permanent post, vide letter dated 28-2-2000. He joined at New Delhi branch of the bank on 16-3-2000. As per terms contained in the appointment letter, he was to be confirmed after putting in 6 months service. In the absence of negative feedback, conveyed to him within a period of 6 months, he was deemed to have been confirmed. He pleaded that probation period of 6 months expired on 16-9-2000. After waiting for 15 days, he enquired from Shri J. Paul, Head of Corporate and Real Estate Services Division, about his confirmation. Shri Paul assured him that he had given a positive report for his confirmation and in due course of time he would be confirmed.

3. On 1-10-2000 he got married and more responsibilities came on his shoulders. Even on joining the job after his marriage, he found no response from his superiors about his confirmation. He again approached Shri Paul for clarification in respect of his confirmation. Shri Paul told him that it was Shri Arun Shetty (who sits at Mumbai) would take a decision on his confirmation. He approached Shri Shetty, who in turn blamed Shri Paul regarding assessment of his performance. This type of behavior was frustrating and unprofessional. Finally he wrote a letter to Shri Venkatesh Rodan, Chief Operating Officer of the bank, seeking his confirmation. Above events made him mentally and psychologically disturbed. As a result he suffered from back ache and was advised to take complete rest for a few days. Inspite of knowing facts about his ailment, Shri Paul and Shri Arun Shetty refused to sanction leave in his favour. Forced by the circumstances, he went on leave from 11-1-2001 to 25-1-2001. On his return from leave, Shri J. Paul took him to the doctor of the bank for check up, inspite of certificate and bills submitted by him. The claimant was shocked from the said behaviour. When he enquired, Shri Paul warned him of dire consequences in near future. On 11-1-2001 he received a two months extension of his probation. He worked to the best of his abilities and strength. He wrote to Shri J. Paul, Arun Shetty and Venkatesh Rodan to apprise them about his work. Shri Paul bounced back saying that the claimant was making legal case against them. These remarks gave a shock to the claimant. His services were dispensed with on 31-3-2001, without any valid reasons. He claims reinstatement in service with continuity and full back wages.

4. Claim was demurred by the bank pleading that the reference was made by the Desk Officer, Ministry of Labour and Employment, Government of India, New Delhi, in a mechanical manner and as such the reference is bad in law. It has further been pleaded that no notice of demand was served on the bank by the claimant and the dispute has not acquired a character of an industrial dispute.

5. The bank presents that the claimant was appointed in Corporate and Real Estate Services Division on the strength of letter dated 28-2-2000. Initially his period of probation was fixed for 6 months. However it was clarified in the appointment letter that his confirmation in service shall be subject to his performance being to the satisfaction of the bank. During the period of probation, performance of the claimant was below expectation. He was advised by his superior to improve his performance and was given adequate opportunity and time for such an improvement. However there was no improvement in his performance. He was found to be lacking in carrying out job entrusted, resulting into huge back log of work. He was also not attending the matters assigned to him and used to keep it pending. His work was of poor quality, lacking

meticulousness and correctness. He was having low output during pressure, poor time management and low credibility amongst internal customers in quality of his work. He was informed of low quality of his working in discussion from time to time and also in writing vide latter dated 11-1-2001. Accordingly his period of probation was extended up to 31-3-2001. However, there was no improvement in his work and performance. Considering that his performance was not up to mark and below expectation, he was not confirmed in service of the bank. His services were terminated vide letter dated 31-3-2001. He is not entitled to any relief. His claim is liable to be dismissed, pleads the bank.

6. In rejoinder, claimant reiterated facts pleaded by him in the claim statement, referred above.

7. On pleadings of the parties, following issues were settled by my learned predecessor :

- (i) Whether the reference has been made by lawfully authorized and competent person/ authority ? If not its effect ?
- (ii) Whether the reference is liable to be dismissed for want of proper notice as claimed by the management ?
- (iii) Whether the dispute is not an industrial dispute ?
- (iv) As in terms of reference.

8. Vide order No. Z-2201/6/2007-IR (B-II), New Delhi dated 11-2-2008, the case was transferred by the appropriate Government to Central Government Industrial Tribunal-II, New Delhi, for adjudication. Vide order No. Z-2201/6/2007-IR (B-II), New Delhi dated 31-3-2001, the case was retransferred to this tribunal by the appropriate Government for adjudication.

9. Claimant has examined himself in support of his claim. Shri J. Paul entered the witness box to testify facts on behalf of the bank. No other witness was examined by either of the parties.

10. Arguments were heard at the bar. Shri Ashutosh Misra, authorised representative, advanced arguments on behalf of the claimant. Ms. Raavi Birbal, authorized representative, made her submissions on behalf of the bank. Written arguments were also filed by the parties. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows.

Issues No. 1 :

11. Onus to discharge the issue was on the bank. No evidence was advanced by Shri Jagdeep Paul to project that the reference order was made by an incompetent person. During the course of arguments Ms. Birbal had

not raised any submissions on the point. Thus it emerged over the record that the bank had abandoned the issue.

12. Even otherwise reference order makes it clear that the appropriate Government was of the opinion that an industrial dispute exists between the employer in relation to the management of the Chief Operative Officer, Deutsche Bank A.G Mumbai, and their workman in respect of matters specified in the schedule and the appropriate Government considered it desirable to refer the said dispute for adjudication. Therefore, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) the appropriate Government referred the dispute for adjudication to this Tribunal.

13. From above facts it is emerging over the record that the appropriate Government formed an opinion that an industrial dispute exists between the bank and the claimant and it was desirable to refer that dispute for adjudication. Therefore, it is evident that it was the Central Government who formed an opinion about existence of industrial dispute and in its subjective opinion it felt satisfied about existence of the dispute. The appropriate Government further formed opinion that adjudication of the dispute was expedient and accordingly referred the dispute to this Tribunal for adjudication. The mere fact that the above opinion of the appropriate Government was conveyed to this Tribunal by the Desk Officer has irked the bank to raise an issue on that count. The Desk Officer had neither formed opinion about existence of industrial dispute nor its expediency to be referred to this Tribunal for adjudication. He simply conveys the subjective satisfaction and opinion of the Government in that regard. Consequently it is emerging over the record the Desk Officer not exercised powers available to the appropriate Government under clause (d) of sub-section (1) of Section 10 of the Act. He simply conveyed the decision taken by the appropriate Government. Resultantly, it cannot be said that it was the Desk Officer who formed opinion under clause (d) of sub-section (1) of Section 10 of the Act. In view of these reasons, the issue is answered in favour of the claimant and against the bank.

Issue No. 2 :

14. Shri Jagdeep Paul opted not to speak even a single word on the proposition that no notice was served by the claimant on the bank, prior to raising an industrial dispute before the Conciliation Officer. In his testimony, the claimant also does not speak that a notice of demand was sent to the bank, prior to raising an industrial dispute before the Conciliation Officer. Thus it is evident that there is a vacuum of evidence on the issue that a notice of demand was sent by the claimant to the bank and on its rejection, he raised an industrial dispute before the Conciliation Officer.

15. An industrial dispute has been defined to mean “any dispute between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the term of employment or with the conditions of the labour of any person.” The definition, referred above, contains two limitation, firstly the adjective “industrial” relates to the dispute to an “industry” as defined in clause (j) of Section 2 of the Act, and secondly, the definition expressly states that not disputes and differences of all sorts, but those which bear upon the relationship of employers and workmen and the terms of employment and conditions of labour, are contemplated. In other words the definition discloses that disputes of a particular kind alone are regarded as “industrial disputes”. An industrial disputes comes into existence when the employer and the workmen are at variance and the “dispute or difference” is connected with the employment or non-employment, the terms of employment or with the conditions of labour. In other words a dispute or differences arise when a demand is made by the workman on the employer and rejected by him and vice versa.

16. In Sindhu Re-settlement Corporation Ltd., [1968 (1) LLJ 834] the Apex Court ruled that a mere demand, asking the appropriate Government to refer the dispute for adjudication, without a dispute being raised by the workmen with their employer regarding such demand, cannot become an industrial dispute. Hence an “industrial dispute” cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In other words, if the workman did not make a demand on the employer no industrial dispute will come into existence. Rejection of the claim of workman by the employer in conciliation proceedings before the Conciliation Officer, will not give rise to an industrial dispute, announced High Court of Delhi in Feeders Lloyd Corporation (Pvt.) Ltd., [1970 Lab. I.C.421]. However, in Bombay Union of Journalists [1961 (II) LLJ-436] the Apex Court declared that an industrial dispute must be in existence or apprehended on the date of the reference. If, therefore, a demand has been made by the workmen and rejected by the employer before the date of reference whether directly or through the Conciliation Officer it would constitute an industrial dispute before the date of reference. In Shambu Nath Goel [1970 (1) LLJ 484], the Apex Court was confronted with a situation where no demand was raised by the workman before his employer, prior to raising a dispute before the Conciliation Officer. It was ruled therein that though the workman had not made a formal demand for his re-instatement, he had contested his dismissal before the Enquiry Officer and claimed re-instatement. Against the findings of the Enquiry Officer he preferred an appeal to the Appellate Authority claiming re-instatement on the ground that his dismissal was bad in law. Then again he claimed re-instatement before the Conciliation Officer in

the conciliation proceedings, which were contested by the employer. From these facts the Apex Court inferred that there was un-impeachable evidence that the workman had demanded re-instatement, denial of which brought an industrial dispute into existence.

17. In Bombay Union of Journalists (*supra*) the Apex Court announced that demand can be made by the workman before his employer directly or through the Conciliation Officer. Even otherwise the Act nowhere projects that a demand of reinstatement is to be made before the employer in writing only. Such demand can be made orally or by way of implication when a workman raised issue of his dismissal before the Appellate Authority. Raising of a demand in writing is not sine qua non for an industrial dispute to come into existence. When a workman raises a demand before the Conciliation Officer and claims his re-instatement, it would be deemed that during conciliation proceedings he raised a demand before the employer for his re-instatement. That fact would bring an industrial dispute into existence. Even otherwise, the appropriate government may form an opinion that an industrial dispute is apprehended and may refer such a dispute for adjudications to a Tribunal. All these aspects made it clear that raising of a demand on the employer directly is not condition precedent for bringing an industrial dispute into existence. Here in the case the claimant raised a demand before the Conciliation Officer for his re-instatement in the services of the bank, which demand was contested. It is evident that the demand, so raised, was rejected by the bank. It rightly gave rise to an industrial dispute. Consequently, it is concluded that an industrial dispute was lawfully raised by the claimant. Issue, is, therefore, answered in favour of the claimant and against the bank.

Issue No. 3 :

18. The definition of “industrial dispute” referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz. (a) employers and employers, (b) employers and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with - (i) employment or non-employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an “industry”.

19. The term “industrial dispute” conveys the meaning that the dispute must be such as would affect large group of workmen and employers, ranged on opposite sides. Even a single employee’s dispute may develop into an industrial dispute, when it is taken up by a Union or a number of workmen, who make a concerted demand for redress. The applicability of the Act to an individual dispute, as distinguished from a dispute involving a group of workmen, is excluded, unless the workmen as a body or considerable section of them, make common cause with

the individual workman. In Central Provinces Transport Services Ltd. [1957 (I) LLJ 27] the Apex Court ruled that an individual dispute cannot per se be an industrial dispute, but it may become so when it is taken up by a trade union or a number of workmen.

20. Now, Section 2A of the Act introduces a legal fiction to the effect that an individual dispute connected with a "discharge, dismissal, retrenchment or termination", is deemed to be an "industrial dispute" notwithstanding that no other workman, nor any union of workmen, espouses such a dispute. Hence, a workmen who has been discharged, dismissed or retrenchment, or whose services have been otherwise terminated, can himself raise a dispute with respect to such dismissal. But that does not mean that such a dispute can be raised by such a workman alone and not by the workmen of the establishment collectively.

21. As detailed above definition of term "industrial dispute" has been enlarged by the legal fiction created by Section 2A of the Act. Hence any dispute relating to discharge, dismissal, retrenchment, or termination of a workman would be an industrial dispute by way of legal fiction created by Section 2A of the Act. Here in the case service of the claimant was terminated on the strength of a letter Ex. WW-1/2. This termination of service of the claimant bring his individual dispute within the ambit of "industrial dispute". Thus it does not lie in the mouth of the bank to say that an individual dispute has been raised by the claimant. The issue, is, therefore, answered in favour of the claimant and against the bank.

Issue No. 4 :

22. Claimant swears in his affidavit dated 27-9-2001, tendered as evidence, that he was appointed on the post of a clerk in Corporate and Real Estate Services Division, New Delhi, vide letter dated 28-2-2000. He joined his service on 16-3-2000. As per terms of his appointment letter he was to be confirmed after putting in six months service. In the absence of negative feed back conveyed to him within a period of six months of service, he is deemed to have been confirmed. When no confirmation letter was received, he inquired from Shri J. Paul in that regard, who assured that he had given positive report for his confirmation.

23. On 1st October, 2000 he got married and had to share more responsibility on his shoulder. Even on joining office after his marriage, he found that there was no response from his superior. He again approached for clarification but no reasons were explained. Shri Paul blamed Shri Arun Shetty for delay in his confirmation. He approached Shri Arun Shetty who blamed Shri Paul claiming that while sitting in Mumbai he was unable to asses his performance. This type of behaviour was very frustrating and un-professional. He decided to approach Shri Venkatesh Rodan and wrote a letter to him in that

regard. He always felt that professional organizations treat matters on merit and make a person accountable if he was at a responsible post. His letter dated 10-1-2001 is Ex. WW-1/3.

24. He details that above happenings mentally and psychologically disturbed him, as a result he suffered from back ache and was advised to take complete rest for a few days. After putting in above application for leave, he went on leave. Shri J. Paul and Shri Arun Shetty refused leave to him. Since he was not in a position to attend his office, he had to go on leave from 11-1-2001 to 25-1-2001. On his return from leave Shri J. Paul asked him to accompany him to the doctor of the bank for check up, inspite of certificate and bills submitted by him. It was extremely bad for the organization to show dis-belief and cause harassment to its employee. On 11-1-2001 he received two months extension letter which is Ex. WW-1/4. It was the first communication sent by the bank to him. He started working to the best of his ability and strength. He made a practice to give his fortnightly job profile to his seniors. He also wrote E-mail to Shri Venkatesh Rodan which Ex. WW-1/6. On this Shri J. Paul vindictively told him that he was trying to make a case against them. Shri J. Paul had a pre-determined mind. His services were terminated on 31-3-2001, vide communication which is Ex. WW-1/2.

25. Shri Jagdeep Paul swears in his affidavit Ex. MW-1/A, tendered as evidence, that the claimant was appointed vide letter dated 28-2-2000 on probation. His letter of appointment is Ex. MW-1/M-1 (this document was proved as WW-1/A by the claimant). His work and performance during the period of probation was below expectation, of poor quality and lacking meticulousness and correctness. His performance was found to be lacking in carrying out job entrusted to him, resulting into huge back log of work. He was also not attending to matters assigned to him and kept them pending. He was giving low output during pressure, poor time management and low credibility amongst internal customers for his quality of work. He was informed about these facts, vide letter dated 11-1-2001, copy of which is Ex. WW-1/2 (this document was proved by the claimant as Ex. WW-1/2). Whenever he was put to deal with accounts work or consumer related work he used to delay in dealing it. Better services that too in time were not provided to the clients. There were various complaints against the claimant by internal clients. In Delhi, persons are available for job for an amount of Rs. 3,000.00 and 3,500.00 per month. However, the bank paying Rs. 11,000.00 plus medical benefits to the claimant to have a person who does job meticulously. During period of his probation the claimant started absenting from his duties unauthorizedly and without prior information to his superiors. Letter dated 17-1-2001 was written calling upon him to join his duties. Since the claimant was found below expectation, the bank decided not to continue with his services. His

services were dispensed with on 31-1-2003 vide letter Ex. MW-1/3.

26. When facts unfolded by the claimant and Shri Paul are appreciated it came to light that the claimant was appointed by the bank as a clerk in Corporate and Real Estate Services Division vide appointment letter Ex. WW1/1 (marked inadvertently as Ex. MW1/M1 by Shri Jagdeep Paul). When Ex. WW 1/1 is perused it emerged that the claimant was to remain on probation for a period of 6 months from the date of his joining service. It is an admitted case that the claimant joined service on 16-3-2000. As emerged out of the terms of appointment, confirmation of the claimant at the end of probationary period was subject to his performance being found to the satisfaction of the bank. The claimant presents that no adverse facts were brought to his notice by the bank till 16-9-2000 and he was deemed to have been confirmed in the service. However, it is not a matter of dispute that letter Ex. WW 1/4 (inadvertently marked as Ex. WW 1/M-2 by Shri Paul) was received by the claimant. When Ex. WW 1/4 is scrutinized it came to light that performance of the claimant was found unsatisfactory by the bank. He was rated poor in response to time in carrying out job entrusted to him and quality of work performed by him. He did not attend to the matters immediately and gave low output under pressure of work. He had a poor time management and low credibility amongst internal customer in respect of quality of his work. In view of reasons detailed above the bank extended his probation till 31-3-2001. Thus, claim made by Shri Rajnish Anthwal that he was deemed to have been confirmed on 16-9-2000 stands belied. It is not a disputed fact that period of probation was extended by the bank.

27. A probationer does not automatically attain permanent status on expiry of his probation. If he is neither discharged nor confirmed, he continues to serve as a probationer until otherwise dealt with. Therefore, in the absence of anything contained in the contract to the contrary nothing would prevent the employer from extending the period of probation for a further reasonable period. The purpose of placing a person on probation is to try him during period of probation to assess his suitability for the job. If an employee who is on probation is removed from his service during his period of probation by order of termination simplesitor, it cannot be said that the order was stigmatic. The principle of law relating to discharge under contract and discharge simplesitor were extended to the discharge of probationer by the Supreme Court in Express Newspaper Ltd. [1964 (I) LLJ 9]. The facts of the case were that a journalist was appointed on probation for a period of 6 months and was to be confirmed on being found suitable for the job. Before the expiry of period of probation the employer terminated his services on the ground that his work was not satisfactory. The journalist challenged his

discharge on the ground that it was mala fide and unfair labour practice on the part of the employer. The employer pleaded that the journalist was appointed on probation, hence termination of his service on account of unsatisfactory work was well within rights. The Apex Court recognized the right of the employer to terminate service of a probationer at the end of the period of probation. The observations made by the Apex Courts are extracted thus :

"there can, in our opinion be no doubt about the position in law that an employee appointed on probation for 6 months continues as probationer even after the period of 6 months if at the end of the period his services had either not been terminated or he is confirmed. It appears clear to us that without anything more an appointment on probation for 6 months give the employer no right to terminate the service of an employee before 6 months had expired except on the ground of misconduct or other sufficient reasons in which case even the service of a permanent employee could be terminated at the end of the 6 months period the employer can either confirm him or terminate his services because his performance is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination the employee continues to be in service as a probationer".

28. The distinction was maintained by the Apex Court between cases of termination of employment of a probationer before period of probation had expired and the cases where the employer exercise his inherent right either to confirm or to terminate the employment of the probationer at the end of the period of probation. When an employee appointed on probation for a specific period is allowed to continue in the post after the expiry of that period without any specific order of confirmation, he continues in his post as a probationer only and acquires no substantive right to the post in the absence of any stipulation to the contrary in the original order of appointment or service rules. When an employee is allowed to continue after end of period of probation, necessary implication would follow that his period of probation has been extended and it cannot be concluded that he should be deemed to have been confirmed. Law to this effect was laid by the Apex Court in Dharam Singh (AIR 1968 SC 1210). Consequently it is clear that an express order of confirmation is necessary to give an employee substantive right to the post and from the mere fact that he is allowed to continue in the post after the end of period of probation, it is not possible to hold that he should be deemed to have been confirmed. In unit Trust of India [1993 (I) LLJ 240] the Apex Court announced that the very purpose of putting a person on probation is to watch his performance.

29. Whether assessment made by the employer about suitability of the employee can be weighed by an Industrial

Adjudicator ? It is a settled proposition that assessment to the effect that service of a probationer is satisfactory or not rests with the satisfaction of the employer. Such satisfaction could be objectively assessed and employer is not bound to give any reason when he does not confirm a probationer on expiry of the period of probation. However the industrial adjudication may call upon the employer to put reason for not confirming an employee when he finds the order laced with mala fide. In Upkar Machinery Ltd., [1996 (I) LLJ 398] the Apex Court ruled that when validity of termination of services, during period of probation without notice and without assigning any reason, is under challenge in that situation Industrial Adjudicator would be competent to find out whether the order of termination was bona fide exercise of power conferred by the contract. In Brook Bond India (Pvt.) Ltd., [1993 (II) LLJ 454] workman was appointed in the first instance for a period of six months, extendable for a further period of three months or more in absolute discretion of the employer. The terms of appointment further provided that the employer had a right to terminate the services of a probationer, "during the period of probation or extended period of probation or before confirmation in writing, without notice and without assigning reasons whatsoever". Service was terminated within the period of probation. During the course of adjudication the employer adduced no evidence to show that the work of probationer was unsatisfactory. The Apex Court ruled that the order of terminating the service of a probationer was capricious and unreasonable. The termination was held to be not justified. The above precedents make it clear that an Industrial Adjudicator has a right to see whether the order of termination is mala fide or whether it amounts to victimization or unfair labour practice.

30. Whether the claimant has been able to show that termination of his service was mala fide act or it amounted to unfair labour practice on the part of the bank ? At the cost of repetition it is said that the claimant presents that after expiry of period of six months no confirmation letter was issued in his favour. When he questioned Shri Paul in that regard, he told that his performance was found satisfactory and matter has been sent to higher authorities for confirmation. Unfortunately when Shri Paul entered the witness box, the claimant could not establish these facts. Shri Paul brushed aside such a claim. According to Shri Paul the work of the claimant was unsatisfactory and poor. He further highlights that the claimant absented himself in an unauthorized manner without prior information to his superiors. He presents that letter dated 17-1-2001 was written calling up on the claimant to join his duties immediately. All these aspects are admitted by the claimant. He attempts to forge a case that he became mentally and psychologically disturbed and developed back ache. Letter Ex. WW 1/3, alleged to have been written by the claimant to Shri Venkatesh Rodan, projects that the claimant was

much obsessed with his confirmation issue. In the letter he tries to emphasize on his superiors about his efficiency and quality of work. The claimant bypassed his superiors and wrote letter to the Chief Operating Officers, which facts smacks of insubordination on his part. A claim has been made that he became mentally/psychologically disturbed, hence he proceeded on leave from 11-1-2001 to 25-1-2001. To substantiate factum of his ailment, as referred above, he relies on medical certificate dated 18-1-2001 which projects that he was under treatment of Dr. Verma for acute low back ache. He purchased medicines from Kadambani Medicos on 16-1-2001. No bills prior to 16-1-2001 were placed over the record. A mentally and psychologically disturbed person will get medicine for soothing his nervous system and not for back ache. For initial 5 days no medication was there. That fact speaks volumes about story projected by the claimant relating to his back ache.

31. It is not a matter of dispute that letter dated 17-1-2001 was addressed to the claimant calling upon him to join his duties immediately. In response to that letter claimant projects that he was under treatment and in need of complete rest. At that juncture medical certificate dated 18-1-2001 was procured. Thus it is emerging over the record that despite call by his employer claimant opted not to join his duties. He remained on unauthorized leave of absence from 11-1-2001 to 25-1-2001. All these aspects reflect behavior of the claimant as an employee.

32. As highlighted by Shri Paul claimant's performance was poor, below expectation, and lacking meticulousness. He opted not to attend to work assigned to him, gave low output during pressure, showed poor time management and displayed low credibility amongst internal customers for quality of his work. When Shri Paul faced or deal of cross examination, the claimant could not dislodge those facts. Assessment report, initiated by Shri Paul was placed before the Tribunal and proved as Ex. WW 1/6. This report was not assailed by the claimant, when he purified facts unfolded by Shri Paul by an ordeal of cross-examination. Thus it has been brought over the record that the work and performance of the claimant were below standard. It led the bank to extend his period of probation, vide letter Ex. WW 1/4. Therefore extension of period of probation is found to be in order.

33. The claimant tried to over reach Shri Rodan, by way of sending e-mail. Ex. WW 1/6 is that e-mail sent by the claimant to Shri Rodan. It was sent by passing the prescribed channel. Therefore it is obvious that claimant lacked normal official standards, which he was supposed to maintain. He could not improve his performance and it rightly led the bank to terminate his service on 31-3-2001. His services were dispensed with when he failed to come to the expected standards. When services of the claimant were dispensed with on expiry of period of probation, it does not amount to retrenchment. Action of the bank is

found to be in order. Issue is, therefore, answered in favour of the bank and against the claimant.

Relief :

34. Since services of the claimant were dispensed with in accordance with the terms of appointment letter dated 28-2-2000, no eyebrows can be raised against the termination order. Being a probationer he had not acquired any right on the post. His services were dispensed with on expiry of extended period of probation. Action of the bank is fully justified. Claimant is not entitled to any relief. His claim is discarded. An award is, accordingly, passed in favour of the bank and against the claimant. It be sent to the appropriate Government for publication.

Dated : 29-6-2012

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 25 जुलाई, 2012

का.आ. 2678.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पश्चिम मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 17/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-7-2012 को प्राप्त हुआ था।

[सं. एल-41011/16/2009-आई आर (बी-1)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 25th July, 2012

S.O. 2678.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Kota as shown in the Annexure, in the Industrial Dispute between the management of Paschimi Madhya Railway and their workman, which was received by the Central Government on 25-7-2012.

[No. L-41011/16/2009-IR (B-I)]
RAMESH SINGH, Desk Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण,
कोटा/केन्द्रीय/कोटा/राज.

पीठासीन अधिकारी — श्री प्रकाश चन्द्र पगारीया,
आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : ओ. न्या./केन्द्रीय/17/2009

दिनांक स्थापित : 9-11-09

प्रसंग भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश
सं. एल.-41011/16/2009 (आई आर-T)
दि. 15-10-09

निर्देश/विवाद अन्तर्गत धारा 10(1)(ध) औद्योगिक विवाद
अधिनियम, 1947

मध्य

नरेश कुमार द्वारा मण्डल सचिव, पश्चिमी मध्य रेलवे कर्मचारी
परिषद् ; कोटा

—प्रार्थी श्रमिक

एवं

मुख्य कारखाना प्रबन्धक, पश्चिमी मध्य रेलवे, कोटा

—अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से : श्री नरेश कुमार
(स्वयं श्रमिक)

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री श्याम गुप्ता
अधिनियम दि. 5-6-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के उक्त प्रासादिक आदेश दि. 15-10-2009 के जरिये निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त “अधिनियम” से सम्बोधित किया जायेगा) की धारा 10(1)(ध) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्बोधित किया गया है :

“Whether the action of the management of Chief Factory Manager, Paschimi Madhya Railway, Kota in imposing the punishment of removal from service on Shri Naresh Kumar, Khalasi w.e.f. 2-3-2006 is justified ? If not, to what relief he is entitled to ??”

2. निर्देश (रेफ्रेन्स) न्यायाधिकरण में जाने पर दि. 9-11-09 को दर्ज रजिस्टर किया गया तथा पक्षकारों को नोटिस जारी किये गये। प्रार्थी का इस मामले में नोटिस तामील होने के बाद न्यायालय में उपस्थित होने का तरीका अनियमित या अव्यवस्थित रहा, कभी वह उपस्थित आ जाता था एवं कभी वह अनुपस्थित रहता था। दि.

21-9-2010 को भी उसकी ओर से कोई उपस्थित नहीं हुआ, 14-2-2011 को भी कोई उपस्थित नहीं था, 17-6-2011 को भी उसकी ओर से कोई उपस्थित नहीं था। इसके बाद 11-11-2011 को प्रार्थी उपस्थित आया एवं क्लेम स्टेटमेन्ट पेश करने हेतु समय चाहा जो दिया गया। उसके बाद 2-4-2012 को भी कर्मकार ने प्रार्थना-पत्र पेश कर क्लेम स्टेटमेन्ट पेश करने हेतु समय चाहा। दि. 2-4-2012 को इस न्यायालय द्वारा आदेशिका के अनुसार निम्न आदेश पारित किया गया :

“प्रार्थी कर्मकार नरेश कुमार व्यक्तिशः उपस्थित।
अप्रार्थी की ओर से श्री श्याम गुप्ता प्रतिनिधि बवक्त सुनवाई उपस्थित नहीं।

प्रार्थी कर्मकार की ओर से एक प्रार्थना-पत्र पेश कर क्लेम स्टेटमेन्ट पेश किये जाने हेतु मौका चाहा गया। सुना गया। प्रकरण 9-11-2009 को दर्ज हुआ तब से क्लेम स्टेटमेन्ट पेश करने में चल रहा है। इस प्रकार करीबन $2\frac{1}{2}$ वर्ष का समय प्रार्थी को क्लेम स्टेटमेन्ट पेश करने हेतु प्राप्त हो चुका है, जबकि औद्योगिक विवाद नियम 10-बी के तहत रेफ्रेन्स की सूचना प्राप्त होने के 15 दिन के अन्दर क्लेम स्टेटमेन्ट पेश करना होता है एवं रेफ्रेन्स 15-10-2009 को हुआ है। इस प्रकार प्रार्थी को पर्याप्त अवसर प्राप्त हो चुका है। इस प्रकार से समय दिया जाना न्यायिक प्रक्रिया का दुरुपयोग है। फिर भी प्रार्थी की प्रार्थना पर एक अवसर इसी शर्त के साथ दिया जा रहा है कि यदि आइंदा प्रार्थी क्लेम स्टेटमेन्ट पेश नहीं करता है तो उसका क्लेम स्टेटमेन्ट पेश करने का अधिकार स्वतः बन्द माना जायेगा एवं उसी के साथ रेफ्रेन्स को भी क्लेम स्टेटमेन्ट पेश नहीं होना मानकर उत्तरित कर दिया जायेगा। इसी के साथ पत्रावली ऊपर वर्णित अग्रिम कार्यवाही हेतु दि. 5-6-2012 को पेश हो।”

3. इसके बाद आज की सुनवाई तिथि पर भी प्रार्थी उपस्थित आया परन्तु कोई क्लेम स्टेटमेन्ट प्रार्थी की ओर से पेश नहीं किया गया एवं मौखिक रूप से उसने क्लेम स्टेटमेन्ट पेश किये जाने हेतु अवसर चाहा। अप्रार्थी के प्रतिनिधि को आपत्ति है। सुना गया।

4. औद्योगिक विवाद नियम 10-बी के तहत रेफ्रेन्स की सूचना प्राप्त होने के 15 दिवस के अन्दर क्लेम स्टेटमेन्ट पेश करना होता है। इस मामले में रेफ्रेन्स 15-10-2009 को हुआ व 9-11-2009 को इस न्यायाधिकरण द्वारा दर्ज रजिस्टर किया गया। प्रार्थी को करीबन ढाई-पौने तीन वर्ष का समय क्लेम स्टेटमेन्ट पेश किये जाने

हेतु प्राप्त हो चुका है परन्तु उसके द्वारा कोई क्लेम स्टेटमेन्ट पेश नहीं किया गया।

5. यदि नियमों में या विधि में कोई कार्यवाही किसी पक्षकार द्वारा कब की जायेगी, इस बाबत उपबंध या प्रावधान है तो पक्षकार को उन्हीं उपबंध या प्रावधान के अनुसार कार्यवाही करनी चाहिए। हस्तगत मामले में औद्योगिक विवाद नियम 10-बी के तहत कर्मकार को रेफ्रेन्स के आदेश के 15 दिवस के अन्दर क्लेम स्टेटमेन्ट पेश करना था परन्तु वह विफल रहा। यदि कर्मकारों का अनिश्चितकाल तक अपना क्लेम स्टेटमेन्ट पेश किया जाने हेतु अवसर दिया जाता रहा तो इन विधि के प्रावधानों या नियमों का कोई अर्थ नहीं रहेगा, पक्षकारान अपनी इच्छानुसार जब चाहे तब इस प्रकार क्लेम स्टेटमेन्ट या साक्ष्य आदि पेश करेंगे, न्यायालय में मुकदमों का भार बढ़ता रहेगा तथा न्यायालय का कार्य मुकदमों के निस्तारण का नहीं होकर के पक्षकारों को स्थगन देने का ही रह जायेगा। अतः प्रार्थी को जो अभी तक $2\frac{1}{2}$ वर्ष से भी ज्यादा की अवधि क्लेम स्टेटमेन्ट पेश करने हेतु मिल चुकी है, उस अवधि को कम या अपर्याप्त नहीं कहा जा सकता अपितु यह अवधि तो काफी ज्यादा ही कही जा सकती है एवं इसके बावजूद यदि प्रार्थी क्लेम स्टेटमेन्ट पेश नहीं करता है तो फिर उसे और कोई अवसर दिये जाने का उपरोक्त वर्णित कारणों से कोई औचित्य नहीं है। अतः प्रार्थी का क्लेम स्टेटमेन्ट पेश किये जाने का अधिकार बन्द किया जाता है। अप्रार्थी के प्रतिनिधि ने भी प्रार्थी के क्लेम स्टेटमेन्ट के अभाव में अपना जवाब व साक्ष्य पेश नहीं करना चाहा।

6. चूंकि मामले में प्रार्थी को हस्तगत रेफ्रेन्स के सम्बन्ध में क्लेम स्टेटमेन्ट आदि पेश करना था परन्तु उसके द्वारा क्लेम स्टेटमेन्ट $2\frac{1}{2}$ वर्ष से ज्यादा की अवधि में भी पेश नहीं किये जाने से न्यायालय द्वारा उसका क्लेम स्टेटमेन्ट पेश किये जाने का अधिकार बन्द किया जा चुका है। अतः इन परिस्थितियों में आज यह आसानी से कहा जा सकता है कि प्रार्थी हस्तगत रेफ्रेन्स में कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के उक्त प्रासांगिक आदेश सं. एल-41011/16/2009 (आई आर-ट) दिनांक 15-10-2009 के जरिये सम्भेषित निर्देश (रेफ्रेन्स) को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थी श्रमिक द्वारा पर्याप्त से भी अधिक समय लिये जाने के उपरान्त भी क्लेम स्टेटमेन्ट पेश नहीं किया गया है, अतः वह हस्तगत रेफ्रेन्स में क्लेम स्टेटमेन्ट के अभाव में किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

नई दिल्ली, 26 जुलाई, 2012

का.आ. 2679.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, धनबाद के पंचाट (आई डी संख्या 251/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-07-2012 को प्राप्त हुआ था।

[सं. एल-20012/105/2000-आई आर (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 26th July, 2012

S.O. 2679.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 251/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. TISCO and their workman, which was received by the Central Government on 26-07-2012.

[No. L-20012/105/2000-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of the
Industrial Disputes Act, 1947.

Reference No. 251 of 2001

PARTIES :

Employers in relation to the management of
Bhelatand Colliery of M/s. TISCO.

AND

Their Workman

PRESENT :

Shri H. M. Singh, Presiding Officer.

APPEARANCES :

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri S.P. Rakshit, Advocate

State : Jharkhand Industry : Coal

Dated, the 16th July, 2012

AWARD

By Order No. L-20012/105/2000-IR (C-I) dated
27-11-01 the Central Government in the Ministry of Labour

has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Bhelatand Colliery of M/s. TISCO in not regularizing Sri L.S.N. Sahdeo as Gomasta is justified? If not, to what relief is the concerned workman entitled and from which date?"

2. The case of the concerned workman is that the concerned workman Shri L.S.N. Sahdeo was on probation from 1-1-83 in the post of Asstt. Gomasta and after completion of 3 months he was doing all jobs of Gomasta and Asstt. Gomasta from 1-4-83 without any break. He performs all duties of Gomasta. He occupied the post of Gomasta after 28-1-1983 when Sri U.N. Singhdeo, Gomasta/Asstt. Revenue Supervisor retired though probation period continued upto 31-3-1983. The concerned workman was appointed in Grade 'D' Tech. & Supervisory, as Asstt. Gomasta which is meant for Tech. & Supervisory Grade 'C' and the grade and post of Gomasta is meant for T&S Grade 'B' and the Gomasta of Jamadoba colliery is presently in T&S Grade 'A' and the demand of the concerned workman is T&S Grade 'B' from 1-4-1983 followed cadre scheme with stagnancy and to place in T&S Grade 'B' for upto date fitness of the wages in T&S Grade 'A' as the Gomasta of Jamadoba enjoying such grade and scale. After one year's successful training in Zamindari department since 1981 he was appointed as Asstt. Gomasta in T&S Grade 'D' with a probation of three months upto 31-3-1983 and it was confirmed regularising the concerned workman w.e.f. 1-4-1983. Due to stagnancy and not granting grade and designation of Gomasta, workman had applied on 10-4-97 which was acknowledged by Sr. Divisional Manager (P&W) regretting that the concerned workman is in T&S grade and considering his stagnancy of 15 years in Grade 'D' of T&S grade since 11-12-1981 he has been granted T&S Gr. 'C' under S.L.U. w.e.f. 1-7-1993 which is illegal and unjustified.

In view of the submission as made above, it has been prayed that the Hon'ble Tribunal be pleased to pass an award by directing the management to regularise the concerned workman in the grade of Gomasta/Asstt. Revenue Supervisor with designation and difference of wages with retrospective effect from February, 1983.

3. The case of the management is that the person concerned was appointed as a trainee in the Land & Lease Department vide letter dated 28-11-1981. It was clearly mentioned in that letter that on successful completion of his training, he would be considered for appointment in suitable post, which he accepted and joined. On completion of training he was appointed as Asstt. Gomasta in the Land Department w.e.f. 1-1-83. The post of Gomasta has been abolished. The person concerned was upgraded

in T&S Grade 'C' as per provisions of S.L.U. w.e.f. 1-7-93 in accordance with the provisions of NCWA. It is not possible for the management to elevate the person concerned to the post of Gomasta, which does not exist at all. The demand of the concerned person for regularisation in the post of Gomasta is neither legal nor justified. The post of Gomasta does not exist at all as per the NCWA and the Mines Act.

In such circumstances it has been prayed that the Hon'ble Tribunal be pleased to hold that the concerned workman is not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The concerned workman produced himself as WW-1, L.S.N. Sahdeo and proved documents as Exts. W-1 to W-15.

The management produced MW-1, Pares Trigunait and proved documents as Exts. M-1 to M-7.

6. Main argument advanced on behalf of the concerned workman is that he is working as Asstt. Gomasta in M/s. TISCO Group of collieries since 11-12-1981 and as Gomasta with effect from 1-4-83 being incharge of three collieries, Malkera, Sijua and Bhelatand and worked upto 1995 at Sijua and was transferred to Jamadoba and was replaced by Sri Rajiv Shankar. It has also been argued that Gomasta/Assistant Revenue Supervisor was retired on 28-1-1983 and the concerned workman was placed in his post for Gomasta/Assistant Revenue Supervisor. He performed number of duties. He has been reported by Agent, Sijua Group for collecting No regarding the following for which you told on Saturday, the 27th instant, Exts. W-2, W-3 to W-6 and another order of Ext. W-7. It has been argued that the management of M/s. TISCO is not regularising the concerned workman as Gomasta/ Assistant Revenue Supervisor from 1-4-1983 and continuing the post of Gomasta under the company after retirement of S.N. Singhdeo. The concerned workman has been ordered by the management to perform the job of Gomasta and he is performing the job of Gomasta from 1983. The post of Gomasta is still in existence in TISCO.

In this connection the management's witness MW-1 accepted that there is post of Gomasta in the management. I have not filed any document to show that the post of Gomasta has been abolished by the Director. But the management failed to produce the documents though the documents were called for. Regularisation of the concerned workman as Gomasta/Asstt. Revenue Supervisor from 1-4-1983 was raised as per Ext. W-8, but the management has not accepted and by letter Ext. W-9 the management refused to give promotion to the concerned workman as Gomasta, though the concerned workman has been performing the service of Gomasta for

more than 29 years continuously. By letter of A.K. Singh, Agent Sijua Group of M/s. TISCO colliery dated 29/4 authorising Mr. Chopra to authorise the concerned workman (Gomasta) to collect documents as Gomasta, Ext. W-12 Management's letter Ext. W-13 is written by Agent, Sijua Group describing the workman as Asstt. Gomasta. Ext. W-14 is addressed to K.K. Mishra, Gomasta and Ext. W-15 is letter of the Union dated 29-11-96 addressed to G.M. Jamadoba for placement of the concerned workman as Asstt. Revenue Supervisor.

7. Management's representative argued that there is no post of Gomasta and that post has been abolished, so he cannot be promoted as Gomasta.

In this respect management's witness MW-1 stated that I have not filed any document to show that the post of Gomasta has been abolished by the Director. He has stated at page 2 that there is no qualification prescribed for the post of Gomasta. Sri U.N. Singh who was Gomasta was non-matric. I cannot say if there is any document to prove that U.N. Singh was doing more work than the concerned workman.

It shows that the concerned workman has been doing the job of Gomasta. There is no order which has been filed which may show that the post of Gomasta has been abolished and as per documents filed by the concerned workman, he is doing all the duties of Gomasta and so, he is entitled to get wages of Gomasta/Assistant Revenue Supervisor from 1-4-1983 and wages of the same prescribed under rules.

8. Considering the above facts and circumstances, I hold that the action of the management of Bhelatand Colliery of M/s. TISCO in not regularising Sri L.S.N. Sahdeo as Gomasta/Asstt. Revenue Supervisor is not justified. So, he is entitled to be regularised as Gomasta/ Asstt. Revenue Supervisor w.e.f. 1-4-1983 and to get difference of wages with all consequential benefits. The management is directed to implement the award within two months from the date of publication of the award in the Gazette of India.

This is my Award.

H.M. SINGH, Presiding Officer

नई दिल्ली, 26 जुलाई, 2012

का.आ. 2680.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, धनबाद के पंचाट (आई डी संख्या 3/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-07-2012 को प्राप्त हुआ था।

[सं. एल-20012/37/2000-आई आर (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 26th July, 2012

S.O. 2680.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 26-07-2012.

[F. No. L-20012/37/2000-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NO. 1 AT DHANBAD

In the matter of a reference U/S. 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 3 of 2011

PARTIES :

Employers in relation to the management of Amlabad Colliery of M/s. B.C.C. Ltd.

AND

Their Workman

PRESENT :

Shri H.M. Singh, Presiding Officer

APPEARANCES :

For the Management : None

For the workman : Shri N.G. Arun,
Authorised
Representatives

State : Jharkhand

Industry : Coal

Dated, the 10th July, 2012

AWARD

By Order No. L-20012/37/2000-IR (C-I) dated 29-6-2000 the Central Government in the Ministry of Labour had, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to the Central Govt. Industrial Tribunal No. 2, Dhanbad :

“Whether the action of the management of Amlabad Colliery of BCCL in demoting Sri S.K. Roy from the post of Storekeeper Gr. I to Storekeeper Gr. II is justified? If not to what relief is the workman entitled?”

2. When this dispute was pending before Central Govt. Industrial Tribunal No. 2, Dhanbad, in exercise of the powers conferred by Section 7-A read with Section (1) of Section 33-B of the I.D. Act, 1947, the Central Government, Ministry of Labour, vide its Order No. L-20012/37/2000-IR(C-I) dated 4-2-2011 transferred this dispute for adjudication by this Tribunal.

3. The case of the concerned workman is that he had been performing work at Amlabad Colliery as Store Clerk upto 1989 and subsequently had been promoted as Asstt. Store Keeper, Grade-II and then as to Store keeper Grade-I. All of a sudden an explanation letter was issued to him on 14-3-93 stating thereto that a committee was constituted on 4-7-92 and they found that there is a shortage of Bricks and Kanti lime in store. In same explanation it was said that the bricks have not been supplied after 1989 whatever supply was there, it had been done prior to this period. It was said that S/Shri P.N. Jha and S.K. Roy were the Store Keeper. The concerned workman had replied on 12-3-1993 against the alleged charges. On self same issue another charge sheet was issued on 17/18-10-93 after lapse of seven months. On receipt of above two charge sheets he demanded to supply the relevant documents on which basis charges were framed. After repeated request when relevant documents were not supplied to him, he had replied to the chargesheets. In the meantime without following legal procedure Shri S.K. Agarwal was appointed as Enquiry Officer vide letter dated 1-11-93 to conduct enquiry against him. He objected against the appointment of Shri Agarwal, who was Superintendent of Mines at the relevant time. But the management had not taken any heed of his objection. Accordingly, the Enquiry Officer conducted the enquiry and submitted his report to the Disciplinary Authority/Dy. CME/Project Officer of Amlabad Colliery. At the relevant time the concerned workman was a Store Clerk and his performance of duty had no connection with bricks stocked out sides. At that point of time the bricks and other materials were being handled by different higher authorities. From the chargesheet it reveals that entire charge was framed for the period of 1974 to 1989. So the charge cannot be construed against him. The enquiry was conducted without giving notice and opportunity. On the basis of report of the Enquiry Officer the concerned workman was demoted from Grade-I to Grade-I vide letter dated 9-4-97. After his demotion from Store Keeper Gr. I to Asstt. Store Keeper Gr. II the management has fixed his pay in the initial basic of clerical Gr. II w.e.f. 9-4-97. A settlement was held before A.L.C. (C), Dhanbad, on which basis his basic has been protected in clerical Grade-II which he was getting in clerical Grade-I. This fitment of basic had been done such a manner that his last basic salary drawn in Grade-I has been fixed in highest slab of Gr. II. Despite these his demotion has not been revoked. Thereafter, the union/workman raised an industrial dispute

before A.L.C.(C), Dhanbad, which ended in failure and the present reference is the out come of that dispute.

In view of the above facts and circumstances it will be clearly evident that the action of the management was not justified.

It has been prayed that the Hon'ble Tribunal be pleased to pass an award directing the employer to promote the concerned as Store Keeper Gr. I from the date of demotion as Asstt. Store Keeper Gr. II i.e. 8-4-97.

4. The case of the management is that the concerned workman was charge-sheeted of shortage of materials of the Store of Amlabad Colliery valuing Rs. 2,90,921. This loss was cause due to gross negligence of the concerned workman, who was issued a charge-sheet under Clause 26.1.2, 26.1.15 and 26.1.11 of the Certified Standing Orders of the Company. Since the reply of the concerned workman was not found satisfactory a domestic enquiry was conducted to enquire into the charges of the concerned workman. In the enquiry he fully participated and he was given full opportunity to defend himself during the enquiry proceeding. The Enquiry Officer held the enquiry according to the Rules of Natural Justice and the concerned workman never complained against the proceedings of the enquiry. The Enquiry Officer found the charges against the concerned workman fully proved. Considering the gravity of charge it was decided to award punishment in demotion and accordingly vide letter dated 10-4-97 the concerned workman was demoted from Store Keeper Grade-I to Asstt. Store keeper Grade II with immediate effect. The action of the management in demoting the concerned workman from Gr. I to Gr. II is fully justified.

It has been prayed that the Hon'ble Tribunal be pleased to pass an award holding that the concerned workman is not entitled to any relief.

5. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

6. The domestic enquiry was held to be not fair and proper and in accordance with the principle of natural justice on 6-12-05.

7. The management produced MW-1, Chandra Sekhar Banerjee, who proved Exts. M-1, M-2 and M-3.

8. Main argument advanced on behalf of the concerned workman is that he has been demoted from Store Keeper Grade-I to the Asstt. Store Keeper Grade-II without any justification. Illegal charge-sheet was issued against him. The Enquiry Officer was appointed, who conducted enquiry. On the basis of enquiry report on a false charge sheet he has been demoted from Grade-I to Grade-II.

The evidence of the management, MW-1, Chandra Sekhar Banerjee was not conclusive which may prove the charges levelled against the concerned workman for shortage of stores of Amlabad colliery amounting to Rs. 2,90,921 which includes Bricks and Katni Lime. This fact and ground cannot be accepted because Ext. M-2 is not conclusive.

Considering the charge sheet, it shows that it was done with prejudice manner and when the enquiry was not found to be fair and proper. No evidence has been given by the management to prove the charge.

9. Considering the above facts and circumstances, I hold that the action of the management of Amlabad Colliery of BCCL in demoting Sri S.K. Roy from the post of Store Keeper Gr. I to Store Keeper Gr. II is not justified. The management is directed to promote Shri S.K. Roy as Store Keeper Grade-I from the date of his demotion as Asstt. Store Keeper Grade-II i.e. with effect from 8-4-1997 with all consequential benefits, within 30 days from the date of publication of the award.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 26 जुलाई, 2012

का. आ. 2681.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 189/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/288/1996-आई आर (सी-I)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 26th July, 2012

S.O. 2681.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 189/1997) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 26-7-2012.

[No. L-20012/288/1996-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1,
DHANBAD**

In the matter of a reference U/s. 10(1)(d)(2A) of the
Industrial Disputes Act, 1947

Reference No. 189 of 1997

PARTIES:

Employers in relation to the management of
Joyrampur Colliery of M/s. BCCL.

AND

Their workman.

PRESENT:

Shri H. M. Singh, Presiding Officer

APPEARANCES:

For the Employers : Shri D. K. Verma, Advocate

For the Workman : Mr. B. B. Pandey, Advocate

STATE : Jharkhand INDUSTRY : Coal

Dated, the 10th July, 2012

AWARD

By Order No. L-20012/288/96-IR (Coal-I), dated 7/10/11-1997 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Joyrampur Colliery of M/s. BCCL in denying Sri Rajendra Pandit, T & S Grade ‘E’ from the date his other juniors have been deputed is justified ? If not, to what relief the concerned workman is entitled ?”

2. The case of the concerned workman is that he was appointed as Clay Cartidge Maker on 13-10-90 and joined his duty on 24-10-90. Since March, 1991 the management deputed the concerned workman is clerical job and he used to perform the job of clerical grades-II. In the year 1992 the concerned workman approached the management for his regularisation in clerical grade-II on the basis of being commerce graduate and working on the said job regularly against permanent vacancy. Subsequently the concerned workman was directed to work as Asstt. Store Keeper (Trainee) at Rehabilitation workshop, Lodna Area. Later on he was posted at Computer Centre at Lodna Area in March, 1995 and since then he has been working at Computer Centre. There is cadre scheme for such workman under the heading “Promotional

Channel for Electronic Data Processing Personnel, Punch verifier Data Entry Operator appearing in Annexure X-I vide Implementation Instruction No. 48 dated 22-7-1985 of the National Coal Wage Agreement No. III. If the said scheme is followed in this case sincerely, the concerned workman is entitled for T & S Grade ‘E’. The management failed to provide the concerned workman T & S Grade ‘E’ while his juniors were given this grade.

Under the circumstances, it has been prayed that the Hon’ble Tribunal be pleased to hold that the action of the management in denying Shri Rajendra Pandit T & S Grade ‘E’ from the date his juniors have been deputed is unjustified and in view of the length of his service and channel for promotion he is entitled for T & S Grade ‘E’ with difference of wages and other benefits.

3. The case of the management is that the concerned workman, Rajendra Pandit, was initially appointed in Jayrampur Colliery as Clay Cartidge Maker in 1990 in Category-I. After sometime the sponsoring union represented before the management that since Rajendra Pandit was a Graduate, he should be deployed in clerical job. Accordingly, he was placed in clerical cadre provisionally for leave and sick vacancy provided he was found suitable in due course. He worked at Jayrampur colliery as and when required, e.g. from 1-1-92 to 28-2-1992 as clerk in leave and sick vacancy, from 21-3-91 to 26-3-91 for distribution of mining shoes, from 3-1-92 to 4-2-92 and again from 20-5-92 to 23-5-92 in dak despatch section. He was also deputed in Finance Department at Jayrampur colliery in February, 1992. Subsequently he was transferred and deployed at the Rehabilitation Workshop, Lodna Area to work as Asstt. Store Keeper (Trainee) vide order dated 22/23-6-1992 and had worked there upto 31-8-92 when he was not found suitable for the job. Thereafter he was posted in Jayrampur colliery in the clerical job as Clerk (T), but, there also he was not found suitable to be absorbed as Clerk. Ultimately through an approval of BCCL H.Q. he was finally transferred to the EDP Section of Lodna Area as a General Mazdoor Category-I vide order dated 31st March, 1995 where he is still working as General Manager. He never worked for 240 days at a stretch while he was assigned the job of clerical grade. In such circumstances, the action of the management in denying the concerned workman G & S Grade ‘E’ from the date his other juniors have been deputed is unjustified, since other persons’ job performance was better and more satisfactory and they competed in the written test and interview. The management with the approval of the competent authority had set up a Committee to screen out suitable workmen to fill up posts under the T & S Grade ‘E’ from among the workmen with written test and interview and vide order dated 6-3-95/13-3-95 had released the list of twenty workmen who qualified in the test and interview in which the name of the concerned workman did not find place. The post of Data Entry Operator (T) is T & S Grade ‘E’ for

which the union raised demand for the concerned workman, is the highly technical and skilled job, and the concerned workman could not complete, while others did.

In such circumstances, it has been prayed that the Hon'ble Tribunal be pleased to hold that the management in denying Rajendra Pandit, T & S Grade 'E' from the date his other juniors have been deputed is justified and the concerned workman is not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The concerned workman produced himself as WW-1 and proved documents as Exts. W-1 to W-32.

The management has not produced any oral evidence.

6. Main argument advanced on behalf of the concerned workman is that his juniors have been promoted, but he has not been promoted. It is against natural justice. It has also been argued that the management has not given him due promotion at due time as per NCWA. The management has given T & S Grade 'E' alongwith his juniors and it appears that he has been given T & S Grade 'D' and juniors have been given T & S Grade 'E'.

In this respect the management representative argued that he was a graduate, so he was deputed to clerical job from 1-1-1992 to 28-2-1992. He was not found suitable for the clerical job, so he was sent back to his original job and was transferred to EDP Section of Lodna Area as General Mazdoor Category-I as per order dated 21-3-1995, after that an industrial dispute was raised. He was promoted to the post of Junior Data Operator Grade 'D' since 2001 as selected by the D.P.C.

It has also been argued that WW-1, during his cross-examination admitted at present I am junior Data Operator Grade 'D' since 2001. He further admitted that Grade 'D' is superior to Grade 'E'. Therefore, his demand for Grade 'E' is not correct. WW-1 admitted that now the position has changed and the demand for T & S Grade 'E' is very old one and the demand for such grade is meaningless.

Another argument advanced on behalf of the concerned workman is that he has been promoted to T & S Grade 'D' from back date. Moreover, he should have been given posting at Computer Centre on 31-3-95. He was allowed to revert back from 1-1-92 as General Mazdoor though he was working as Asstt. Store Keeper from 22-6-92 and he joined duty on 26-6-92 at Rehabilitation Workshop, Lodna Area. He was ordered to work as store clerk. He was also issued instruction to complete Store

Ledger. He was issued order on 24-7-92 to work as Asstt. Store Keeper (T). He had taken charge on 3-7-92. Then on 20-8-92 he was again asked to work as Clay Cartridge Maker. On 31-8-92 his designation was Asstt. Store Keeper (T). Thereafter, he was given the post of Jr. Data Operator (T) as per order of the management dated 29-6-2000 and he joined on 3-7-2000. After that he had been promoted vide order dated 3/4-10-2001 to Grade 'D' and he was regularised as Jr. Data Operator in T & S Grade 'D'.

7. Considering the above facts and circumstances, I come to the conclusion that the action of the management of M/s. BCCL in denying Sri Rajendra Pandit, T & S Grade 'E' from the date his other juniors have been deputed is not justified. Accordingly, I hold that the concerned workman is entitled to be deputed in T & S Grade 'E' from the date his other juniors have been deputed and he is also entitled to get difference of wages and other consequential benefits. The management is directed to implement the award within 30 days from the date of publication of the award in the Gazette of India.

This is my award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 26 जुलाई, 2012

का. आ. 2682.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीसीएल के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं.-1, धनबाद के पंचाट (संदर्भ संख्या 55/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/397/1998-आई आर (सी-1)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 26th July, 2012

S.O. 2682.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 55/1999) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 26-7-2012.

[No. L-20012/397/1998-IR (C-1)]
AJEET KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1,
DHANBAD**

In the matter of a reference U/s. 10(1)(d)/(2A) of the
Industrial Disputes Act, 1947

Reference No. 55 of 1999

PARTIES:

Employers in relation to the management of
Kuju Area of M/s. C.C. Ltd.

AND

Their workmen

PRESENT:

Shri H. M. Singh, Presiding Officer

APPEARANCES:

For the Management : Shri D. K. Verma, Advocate

For the Workmen : Mr. U. N. Lal, Advocate

STATE : Jharkhand INDUSTRY : Coal

Dated, the 1st June, 2012

AWARD

By Order No. L-20012/397/98-IR (C-I) dated 17-4-99 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Kuju Area, C. C. Ltd., P.O. Kuju, Distt. Hazaribagh in not accepting the demand of the union for proper fixation of wages in respect of Smt. Sukarmuni Kamin, Pacho Kamin, Mangari Kamin, Budhani Kamin, Bhukhali Kamin, Pairo Kamin, Mangari Kamin-II, Shanti Kamin, Suku Devi, Somia Orawin, Suko Devi, Kurni Kamin, Ratni Devi, Dashmi Kamin, Sunil Devi, Nira Devi Kandi Kamin, Manjhali Devi, Sonamati Kamin, Birsi Devi and Tetri Devi. All Category-I Mazdoor taking into account their SPRA and as per the provisions laid down in J.B.C.C.I. and NCWA is legal and justified ? If not, to what relief the concerned workmen are entitled ?”

2. The case of the concerned workman is that they transferred by the management from piece-rated Group-III posted in different units of CCL's Kuju Area on permanent basis to the office of the General Manager, Kuju Area in the interest and requirement in Time-rated Category on being designated as General Mazdoor Cat. I of NCWA at the initial of the scale without getting the consent of the concerned female workmen and/or option. The basic

wages of Group-III piece-rated workmen were fixed at Rs. 22.71 per day and fall back wages at Rs. 21.85 per day by NCWA-III w.e.f. 1-1-83. The SPRA for Group III piece rated was fixed as follows under NCWA-III.

Amount Per Day

(i) w.e.f. 1-1-83	—	Rs. 1.20
(ii) w.e.f. 1-1-84	—	Rs. 1.80
(iii) w.e.f. 1-1-85	—	Rs. 2.40
(iv) w.e.f. 1-1-86	—	Rs. 3.00

The basic wage of each workman on date of transfer and designation was as indicated below :—

Sl. No.	Name	Date of Transfer of Category-I	Basic Wages
1.	Smt. Sukarmuni Kamin	1-4-1983	23.91
2.	Smt. Pacho Kamin	1-4-1983	23.91
3.	Smt. Sudhani Kamin	1-4-1983	23.91
4.	Smt. Talo Kamin	8-2-1984	24.51
5.	Smt. Mangri Kamin	4-2-1985	25.11
6.	Smt. Shanti Kamin	4-2-1985	25.11
7.	Smt. Kurani Kamin	4-2-1985	25.11
8.	Smt. Birsai Devi	4-2-1985	25.11
9.	Smt. Sunil Devi	4-2-1985	25.11
10.	Smt. Kandi Kamin	4-2-1985	25.11
11.	Smt. Bhukhali Kamin	4-2-1985	25.11
12.	Smt. Tetri Devi	4-2-1985	25.11
13.	Smt. Pairo Kamin	4-2-1985	25.11
14.	Smt. Sonamati Kamin	4-2-1985	25.11
15.	Smt. Suko Devi	4-2-1985	25.11
16.	Smt. Dashami Kamin	4-2-1985	25.11
17.	Smt. Ratni Devi	4-2-1985	25.11
18.	Smt. Manjhli Kamin	4-2-1985	25.11
19.	Smt. Somia Orawin	20-4-1986	25.71
20.	Smt. Mangri Kamin-II	4-2-1985	25.11
21.	Smt. Nira Devi	3-8-1985	25.11

The workmen transferred and redesignated/regularised as Category-I with basic wage of Rs. 22.91 on 6-4-1983 were put at Rs. 21.16 reducing the basic wage by Rs. 1.75 per day besides depriving minimum guaranteed benefit and fixation under NCWA. The workmen transferred and regularised as Category-I on 21-2-1985 with a basic wage of Rs. 25.11 per day were also placed at initial

of Category-I scale Rs. 21.16, thus forfeiting basic wage of Rs. 3.95 per day. Thus, the transfer and redesignation/regularisation was effected as a penalty but without notice and in gross violation of service condition. Thus, the reduction in basic wage on transfer is wholly arbitrary, illegal and void. The minimum guaranteed benefit under clause 2.8 of NCWA is applicable to all workmen, who were in service on 31-12-1992 and continued in service from on or after 1-1-1983. The said guaranteed benefit of Rs. 91 per month plus two increments in the revised scale is to be extended to all time rated scales, both daily rated and monthly rated including such piece rated workers redesignated/converted or regularised in time rated scale on or after 1-11-83 as per clause 2.8 of NCWA-III read with implementation order of JBCCI/CIL, I.I. No. 26 dated 23-4-1984. The concerned workmen have been discriminated illegally and unreasonably deprived of the said vested monetary right.

Under such circumstances it has been prayed that the Hon'ble Tribunal be pleased to answer the reference in favour of the workmen by directing the management to fix the wages of the workmen in Category-I as per provision of NCWA-III contained in clause 2.8 and 2.9 taking the basic wage of each workmen on their date of transfer as Category-I, including SPRA and minimum guaranteed benefit as per provision of clause 2.8 of NCWA read with I.I. No. 26 of 23-4-1984 and fitment into Category-I scale of Rs. 21.16-0.43-27.18 with effect from their respective date of transfer as Cat. I with difference of wages and also the benefits of revision of wages as per NCWA-IV and NCWA-V.

3. The case of the management is that the concerned female workers were belonging to piece-rated groups and the payment of wages to them was dependant upon the nature of jobs performed by them and the quantity of work load given by them on different jobs. The piece-rated workers got the piece rated wages on the basis of quantity of work executed by them and different wages has been fixed for different kinds of work in different groups. They get also SPRA according to number of years of service put by them. Thus, the wages payable to piece rated workers always remain variable and not fixed and their minimum guaranteed wages is as prescribed for group I piece rated workers. The Concerned workmen expressed their difficulties in performing hard manual jobs of piece rated workers on account of their health problems, physical disability and approached the management to provide them alternate jobs on the time-rated category on the surface specially in the area office for doing sweeping, cleaning etc. which are the jobs of general mazdoors. The management considered their cases and converted them from piece-rated groups to time-rated category as general mazdoor in Category-I. They were fixed in the scale of pay for time-rated workers in Category-I. It has been submitted that the JBCCI-I or NCWA has nowhere prescribed any

procedure or rules for fixation of wages in the event of conversion of piece-rated workers into time-rated categories. Therefore, the demand of the union for fixing their wages in time-rated category-I as per JBCCI-I and NCWA is without any basis and the reference is liable to be summarily rejected. The time-rated workers are entitled to wages as fixed under the NCWAs according to nature of jobs performed by them. The demand of the sponsoring union for payment of SPRA meant for piece-rated workers to the concerned workmen after conversion to the time rated workers is without any merit and the same is liable to be summarily rejected. The concerned workmen are not entitled to any relief.

Under the facts and circumstances stated above, it has been prayed that the Hon'ble Tribunal be pleased to pass the award holding that the concerned ladies are not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The concerned workman produced WW-1, Smt. Sukarmahi Kamin and WW-2, Naresh Prasad.

The management produced MW-1, Arjun Singh.

6. Main argument advanced on behalf of the concerned workmen is that they were transferred by the management from piece-rated Group-III to Time-rated Category-I as General Mazdoor of NCWA at the initial of the scale without getting their consent and without issuing notice under Section 9A of the I.D. Act. So, they should be given SPRA and pay protection by the management as per NCWA. They were transferred in Category-I w.e.f. 1-4-1983/8-2-1984/4-2-1985 as per their written statement. Their wages were allowed less @ Rs. 1.75 per day, apart from the minimum guaranteed benefit and fixation benefit under NCWA-III with protection of SPRA.

7. The management argued that they have been given piece-rate to time-rate on their request because they approached the management to provide them alternative jobs on the time rated category on the surface for doing light work and they have got their pay protection by the management. They have been given Category-I in time-rated category. Their demand for payment of SPRA after their conversion to time-rated workers cannot be justified.

8. In this respect the documents filed by the workmen Exts. W-1, W-1/1 and W-1/2 show that their pay has been reduced from piece-rated category to time rated category.

9. The management's witness MW-1, Arjun Singh, in his cross-examination at page 2 stated that without going through the records I am not in a position to state as to which of the concerned working lady was posted in which colliery, in Kuju area during the relevant period. No any document has been filed in this case to show that the

concerned ladies had expressed their inability or difficulty and only then they were converted into time-rated job. He has admitted that Exts. W-1, W-1/1 and W-1/2 the office orders are under the signature of M. A. Siddique, the then Staff Officer of Kuju Area. It is not a fact that SPRA is not an incentive, rather an annual increment to the piece-rated worker. It is true that wage or salary of a workman cannot be reduced or curtailed without any punishment inflicted upon him by the management. It is true that at the time of conversion into time-rated job the piece-rated wages of the concerned ladies were not taken into consideration. SPRA was not taken into account at that time. The management's witness clearly stated that SPRA was not taken into account at the time of conversion into time rated job. He has also stated that the wage of a workman cannot be reduced or curtailed without any punishment inflicted upon him by the management. The management's evidence shows that their basic pay has been reduced at the time of conversion from piece-rate to time-rate which is against NWCA.

10. Considering the above facts and circumstances, it shows that the action of the management of Kuju Area of M/s. C.C. Ltd. in fixation of wages of the concerned workmen by reducing wages at the time of their conversion from piece-rate to time-rate in Category-I General Mazdoor as per JBCCI and NCWA is not legal and justified. So, the concerned workmen, mentioned in the schedule of reference, are entitled for fixation of their wages taking into account their SPRA as per JBCCI and NCWA from the date of their conversion from piece-rate to time-rate category and to get difference of wages of the above period. The management is directed to implement the award within two months from the date of publication of the award in the Gazette of India.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 26 जुलाई, 2012

का.आ. 2683.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार के एल एम ग्राहल डच एयरलाइंस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुम्बई के मंचाट (आई डी संख्या सी जी आई टी-2/87 का 2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2012 को प्राप्त हुआ था।

[सं. एल-11012/60/2009-आई आर (सीएम-1)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 26th July, 2012

S.O. 2683.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. CGIT-2/87

of 2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of M/s KLM Royal Dutch Airlines and their workmen, which was received by the Central Government on 26-7-2012.

[No. L-11012/60/2009-IR (CM-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT:

K. B. KATAKE, Presiding Officer

Reference No. CGIT-2/87 of 2009

Employers in relation to the management of

M/s. KLM Royal Dutch Airlines

M/s. KLM Royal Dutch Airlines,
Sarjan Plaza,
100, Dr. Annie Besant Road
Worli
Mumbai-400 018.

AND

Their Workman

Mr. Anthony Mathias
F-402, Palm Court
Link Road
Malad (W)
Mumbai-400 064.

APPEARANCES:

For the Employer : Mr. Sunil Shroff,
Advocate

For the Workman : Mr. P. N. Salgaonkar,
Advocate

Mumbai, the 14th June, 2012

AWARD

The Government of India, Ministry of Labour and Employment by its Order No. L-11012/60/2009-IR (CM-I), dated 14-12-2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

“(i) Whether Shri Anthony Mathias who was working as Sr./Sales Executive with KLM Royal Dutch Airlines is a workman u/s 2 (s) of the I.D. Act, 1947 ? (ii) Whether the action of the management in separating Shri Mathias from the services w.e.f.

31-1-2009 on superannuation as contended by the employer or w.e.f. 9-2-2009 as contended by the workman concerned is justified and legal ? (iii) To what relief is the workman concerned entitled?"

2. After service of notices both the parties appeared through their respective representatives. In response to the notice, the second party workman filed his statement of claim at Ex-6. According to the second party workman he was appointed by KLM Royal Dutch Airlines as Passage Assistant vide their appointment letter dt. 2-2-1978. the said airlines illegally terminated the services of the second party from 9-2-2009. The second party raised industrial dispute for reinstatement before ALC (C). On the failure report of the conciliation officer, Ministry of Labour and Employment sent the reference to this Tribunal. The second party workman therefore prays to quash and set aside the order of termination of services of the workman and reinstate him with full back-wages and continuity of service.

3. First party management resisted the statement of claim vide their written statement at Ex-8. According to the first party, the dispute raised by the second party is ab initio void, untenable and the same is liable to be rejected. According to them, second party is not a 'workman' as defined under Section 2(s) of the I.D. Act as he was drawing salary exceeding Rs. 6,500 per month and was assigned to and performing the duties of supervisory, managerial and administrative nature. According to the first party, the second party was engaged by it on contract after his retirement. They terminated his contract of employment as provided therein and therefore the second party is not entitled to claim benefit of conditions of employment. Therefore the first party prays that the reference be rejected.

4. Second party workman filed his rejoinder at Ex-9 in reply to the written statement of the first party. Issues were framed at Ex-11. Thereafter matter was fixed for evidence of management witness. Today workman filed application Ex-48 stating that the dispute is amicably settled out of court and he has received all the legal dues from first party. He also filed the memorandum of settlement along with the application and prayed to dismiss the reference as settled.

ORDER

As dispute is settled amicably vide Memorandum of Settlement Ex-48, the reference is dismissed for want of prosecution with no order as to cost.

Date : 14th June, 2012

K. B. KATAKE, Presiding Officer

ANNEXURE

BEFORE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II AT MUMBAI

Reference (CGIT) No. 2/87 of 2009

M/s. KLM Royal Dutch : First Party
Airlines

AND

Mr. Anthony Mathias : Second Party

MAY IT PLEASE THE HON'BLE COURT :

The Second Party in the above matter begs to submits that :

The Second Party submits that he has settled his dispute amicably with the Management of the First Party and receive all legal dues in full and final settlement out of the Hon'ble Court.

The Second Party is therefore, pray that the Hon'ble Court may be pleased to dismiss the above Reference for want of prosecution as settled his dispute amicably out of the Hon'ble Court.

Place : Mumbai,

Date : 14-6-2012

(ANTHONY MATHIAS)
SECOND PARTY

Identified by me and no objection

(P. L. SALGAONKAR)
Advocate for the Second Party

No objection.

MEGHA HEDARHAR
Advocate for the First Party

MEMORANDUM OF SETTLEMENT

Under Section 2(p) of Industrial Disputes Act, 1947, read with Rule 62 of the Industrial Disputes (Bombay) Rules, 1957.

NAME OF THE PARTIES

First Party	: M/s. KLM Royal Dutch Airlines, Urmi Angan, 5th Floor, 13A, Peddar Road, Mumbai-400 026
-------------	--

Second Party	: Mr. Anthony Mathias, F-402, Palm Court, Link Road, Malad (West), Mumbai-400 064
--------------	---

2891 90712 - 24

SHORT RECITAL OF THE CASE

M/s. KLM Royal Dutch Airlines (hereinafter referred to party on the First Party had employed Mr. Anthony Mathias, hereinafter referred to as the Second Party was initially as a Passage Assistant and at the time of his retirement, he was working as Senior Sales Executive. As per First Party's records, the Second Party attained the age of superannuation i.e. 58 years on 31-01-2009 and accordingly he was retired.

The Second Party was re-engaged on fixed term contract basis on his volition subject to terms and conditions. The Second Party signed a Contract of Employment dated February, 5, 2009 with the first party for a period of six months from February, 10, 2009 to August 2009 and the same was accepted by the Second Party unconditionally. As per the terms and the conditions of the contract, the First party terminated the said contract by letter dated 8-6-2009.

After termination of said contract, the Second Party raised dispute before the Ld. Conciliation Officer, Mumbai, who admitted the said demand in conciliation and recorded failure. Thereafter the said dispute is referred for adjudication before the Hon'ble CGIT No. II being Reference (CGIT) No. 2/87 of 2009. The said dispute is still pending hearing before the Hon'ble Central Govt. Industrial Tribunal II, Mumbai.

2. In the meantime, the Second Party personally approached the First Party Airlines for settlement of the dispute raised by him. As a result of discussions held between the parties and without prejudice to their rights and contentions made in the pending Reference before CGIT No. II, Mumbai, the parties have arrived at an amicable settlement on the following terms :

TERMS OF SETTLEMENT

- As and by way of settlement of dispute raised by the Second Party before the Hon'ble CGIT No. II at Mumbai, the First Party hereby agrees to pay net amount of ex-gratia of Rs. 15,15,967 (Rupees Fifteen Lakh Fifteen Thousand Nine Hundred Sixty Seven Only) and Rs. 10,00,000 (Rupees Ten Lakh Only) as payment of gratuity, as shown in statement annexed to this settlement by Cheque No. 034916 dated 06-06-2012 drawn on Deutsche Bank, New Delhi to the Second Party and the Second Party agrees to accept the said amount in full and final settlement of all his claims against the First Party including his claim for reinstatement, reemployment, gratuity, back wages and all claim in Reference (CGIT) No. 2/87 of 2009, which is pending hearing before Hon'ble CGIT II, Mumbai.

- The Second Party hereby agrees to withdraw his dispute, being Reference CGIT No. 2/87 of 2009, presently pending before Hon'ble Central Govt. Industrial Tribunal-II, Mumbai, as the parties have mutually settled their dispute out of the Hon'ble Tribunal.
- The Second Party hereby agrees to file necessary application for withdrawal of his dispute alongwith copy of this settlement before the Hon'ble CGIT-II, Mumbai.
- Also the Second Party confirms that this settlement is not signed under any duress and absolve First Party of any other further claims/disputes after this settlement.

FOR AND ON BEHALF OF
THE FIRST PARTY

Sd/-

(PIETER DE MAN)

Place : Mumbai

Date : 14th June, 2012

Witnesses : (1) _____

(2) _____

FOR AND ON BEHALF
OF THE SECOND PARTY

Sd/-

(ANTHONY MATHIAS)

**Full & Final Settlement made to Anthony Mathias as on
14th June, 2012**

Sl. No.	Particulars	Rate	Amount
1	2	3	4
1.	Basic Salary	63932	1,534,368
2.	HRA	4680	112,320
3.	Transport All	1750	42,000
4.	Ex-gratia		184,124
5.	13th Month		127,864
6.	LTA		127,864
7.	Medical Reim		20,000
	Gross Earnings (A)	70362	2,148,540
	Less Deductions		
1.	I. Tax	0	365,629
	Gross Deduction (B)	0	365,629
	Total Amount to be paid C = (A – B)		1,782,911
	Less already received from KLM in 2009		266,944
	Net Amount received vide Cheque No. 034916/6 June 2012		1,515,967

Received the above amount Rupees Fifteen Lac Fifteen Thousand Nine Hundred & Sixty Seven Only from KLM Royal Dutch Airlines, India as the Full and Final settlement of my dues.

I herewith further confirm that I have no interest, dues or claim whatsoever (money or otherwise) from KLM Royal Dutch Airlines, India. With above settlement, KLM Royal Dutch Airlines, India will be fully free and discharged of any liability whatsoever towards me.

Place : Mumbai

Date : 14th June, 2012

Anthony Mathias

Settlement of Gratuity dues made to Anthony Mathias as on 14th June, 2012

Sl. No.	Particulars	Rate	Amount
1	2	3	4
1.	Gratuity		1,000,000
	Gross Earnings (A)		1,000,000
	Less Deductions		
1.	I. Tax		—
	Gross Deduction (B)	0	—
	Total Amount to be paid C = (A – B)		1,000,000
	Net Amount received vide Cheque No. 034916/6 June 2012		1,000,000

Received the above amount Rupees Ten Lac only from KLM Royal Dutch Airlines, India as the settlement of Gratuity amount due to me.

I herewith further confirm that I have no interest, dues or claim whatsoever (money or otherwise) from KLM Royal Dutch Airlines, India. With the above settlement, KLM Royal Dutch Airlines, India will be fully free and discharged of any liability on account of Gratuity towards me.

Place : Mumbai

Date : 14th June 2012

Anthony Mathias

RECEIPT

Received from M/s. KLM Royal Dutch Airlines, situated at Urmi Angan, 5th Floor, Peddar Road, Mumbai-400 026 an amount of Rs. 25,15,967 (Rupees Twenty Five Lakh Fifteen Thousand Nine Hundred Sixty Seven Only). Being net amount of Rs. 15,15,967 as ex-gratia amount as shown in Annexure and Rs. 10,00,000 as gratuity by cheque, bearing No. 034916 dated 06-06-2012 drawn on Deutsche Bank, New Delhi, towards full and final settlement.

I say that I have received the above amounts consisting of all my legal dues including my claim for reinstatement, reemployment, gratuity, bonus, back wages, if any etc. today. I say that I have received the above amount in full and final settlement of all my claims against KLM Royal Dutch Airlines. I hereby declare that I will not have any claims of reinstatement or reemployment against KLM Royal Dutch Airlines in future including my claim in dispute raised before Hon'ble CGIT No. II, Mumbai being Reference (CGIT) No. 2/87 of 2009.

I have signed this receipt with full knowledge of the contents hereof, which are true to my own knowledge and belief.

I say I received.

(ANTHONY MATHIAS)

Place : Mumbai

Date : 14th June, 2012

Witnesses : (1) _____

(2) _____

नई दिल्ली, 26 जुलाई, 2012

का.आ. 2684.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (आई डी संख्या 14/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2012 को प्राप्त हुआ था।

[सं. एल-20012/67/2006-आई आर (सी एम-I)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 26th July, 2012

S.O. 2684.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2007 of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s BCCL and their workmen which was received by the Central Government on 26-7-2012.

[No. L-20012/67/2006-IR (CM-I)]
AJEET KUMAR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. I, DHANBAD****In the matter of a reference U/s. 10(1)(2A) of I.D. Act.****Reference No. 14 of 2007****PARTIES:**

Employers in relation to the management of Sijua Area of M/s. BCCL.

AND**Their Workmen****PRESENT :**

Shri H. M. Singh, Presiding Officer

APPEARANCES:

For the Employers : Shri D.K. Verma,
Advocate

For the Workman : Shri U.P. Sinha,
Advocate

State : Jharkhand Industry : Coal

Dated the 16th July, 2012

AWARD

By Order No. L-20012/67/2006-IR (Coal-I) dated 13/14-2-2007 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of I.D. Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Tetulmari Colliery of M/s. BCCL in superannuating Sh. Karam Chand Prasad w.e.f. 31-12-2002 is legal and justified? If not, to what relief is the concerned workman entitled?"

2. The case of the concerned workman is that he was employed in Tetulmari colliery under Sijua Area of BCCL. He came into employment of North Loyabad Colliery on 27-1-1973, where his 'B' Form No. was 200 in which his date of birth was recorded 13-12-1953. North Loyabad Colliery was merged with Tetulmari Colliery after nationalisation of Non-Coking Coal Collieries in 1973 (31-1-1973) and a new 'B' Form Register was prepared in which his B Form No. was re-allotted as 1755 mentioning his old B Form register also his date of birth is recorded as 13-12-1953 and his designation was recorded as Electrician Helper. He read upto Class-XI as regular student of Gandhi Smarak Uchchagal Vidyalaya Goh in the district of Aurangabad from the year 1966 to the year 1970 March. He had submitted the copy of school leaving certificate to the management in which his correct date of birth was

13-12-1953 which was recorded in 'B' Form register of the colliery. The concerned workman was issued Identity Card in which his date of birth was recorded as 13-12-1953. No date of birth was mentioned in computerised Identity Card issued to him from E.D.P. He was issued important excerpt of service file whereby he was informed that his date of birth is 13-12-1953. Therefore his date of superannuation is 31-12-2013 and accordingly he would retire from 31-12-2013. But he was issued notice of retirement from 31-12-2002 as per record of N.E.I.S. Management changed his date of birth in N.E.I.S. without any notice to him. Therefore, an industrial dispute was raised before A.L.C.(C), Dhanbad, which ended in failure. Thereafter the present dispute has been referred to this Tribunal by appropriate Government, for adjudication.

In such circumstances it has prayed that the Hon'ble Tribunal be pleased to pass an award in favour of the workman by directing the management to reinstate the concerned workman with full back wages and consequential benefits.

3. The case of the management is that he was permanent employee of Tetulmari Colliery where he was working as Electrician Foreman. As per N.E.I.S. record the date of birth of the concerned workman is recorded as 13-12-1942. According to the provision of Certified Standing Orders a workman who completes the age of 60 years will retire from the service of the company. He completed 60 years as on 13-12-2002. Accordingly he has been retired from the service of the company w.e.f. 31-12-2002 as per NCWA. After service of notice of superannuation to the concerned workman, he raised a dispute regarding his date of birth stating therein that in old Form 'B' Register his date of birth is recorded as 13-12-1953. The management examined the Form 'B' Register and found that there is over-writing and cutting in Form 'B' without any signature. The management referred the case of concerned workman to the D.O.B. Committee at Headquarter level for decision. The committee referred him to Apex Medical Board for determination of his. The Apex Medical Board assessed his age as 61 years as on 23-11-2004. As per the provision of NCWA once the age is assessed by the Apex Medical Board that cannot be challenged as the same is binding upon both the parties. The concerned workman was rightly superannuated w.e.f. 31-12-2002, the date of birth recorded in N.E.I.S. record. The claim of the workman that his date of birth recorded in Form 'B' Register as 13-12-1953 is not correct as it is overwritten and interpolated.

Under such circumstances it has been prayed that the Hon'ble Tribunal be pleased to hold that the superannuation of the concerned workman is legal and justified and he is not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The concerned workman produced himself as WW-1 and proved documents as Exts. W-1 to W-5.

The management produced MW-1, Kukar Tarmoy.

6. Main argument advanced on behalf of the concerned workman is that his date of birth is 13-12-1953 which has been recorded in Form 'B' Register of the colliery and he has also filed school leaving certificate in which his date of birth has been mentioned as 13-12-1953. He was issued Identity Card from Tetulmari Colliery on 29-8-1975 mentioning his date of birth as 13-12-1953. He obtained Prathama Certificate from Hindi Sahitya Semandan Prayag in order to get Electrical Supervisory Certificate in which his date of birth has been mentioned as 13-12-1953 as per School Leaving Certificate. He was promoted as Electrical Foreman and rose upto Foreman Incharge (Electrical) on the basis of Prathama Certificate. He was issued notice of retirement from 31-12-2002 as per record of N.E.I.S. in which his date of birth has been recorded as 13-1-2-1942. He represented before the management and raised objection but nothing has been done. He has filed copy of school leaving certificate, Ext. W-1 and also Exts. W-2, W-3, W-4 and W-5.

7. Argument advanced on behalf of the management is that his date of birth of the concerned workman as per N.E.I.S. record is 13-12-1942 and he has been retired from service w.e.f. 31-12-2002. It has also been argued that in Form 'B' Register cutting has been done. Therefore, the matter was referred to Apex Medical Board for determination of his age and the Apex Medical Board assessed his age as 61 years as on 23-11-2004. He has raised objection about the matter of retirement so it cannot be considered.

In this respect the argument on behalf of the concerned workman is very much material. When in school leaving certificate and Prathama Certificate is date of birth has been mentioned as 13-12-1953 it cannot be ignored. Moreover, when his Electric Supervisory Certificate shows his date of birth as 13-12-1953 so it cannot be disputed as per management's criteria. Moreover, in Form 'B' Register his date of birth has been mentioned as 13-12-1953 and this Form 'B' Register remains in the custody of the management.

MW-1, Management's witness, in his cross-examination has stated that Form 'B' Register remained in the custody of Sijua Area. He also stated that I cannot say regarding entry in Form 'B' Register. I have not seen the original Form 'B' Register. I have not seen the original copy of the note sheet. I cannot say when the concerned workman was referred to Apex Medical Board.

It only shows that his date of birth mentioned in Electrical Supervisory Certificate should have been considered by the management.

Circular dated 20-10-1990 at page 19 in para 37(i) it has been referred to follow his matriculation or school leaving certificate granted by the Board of Secondary Education or similar educational authority.

In para (v) it has been mentioned that the date of birth of a workman, once entered in the service card of the establishment shall be the sole evidence of his age in relation to all matters pertaining to his service including fixation of the date of his retirement from the service of the establishment. All formalities regarding recording of date of birth shall be finalised within three months of the appointment of a workman. (vi) Cases where date of birth of any workman had already been decided as per the J.B.C.C.I. provisions on the date of these rules come into force shall not be re-opened under these provisions.

On behalf of the concerned workman 2002(95) FLR 556 has been referred in which Hon'ble Bombay High Court referred—"Industrial Dispute Act, 1947—Section 2-A—Superannuation—At the age of 60 years—Date of birth—Onus to prove—Entries in nomination form made by officer of the firm and the workman merely signed it—Petitioner's firm had filled it on basis of evidence available—The form filled by workman as per school leaving certificate—There is no reason to disbelieve it—School leaving certificate and the evidence led by the respondent are consistent with each other—Petitioner could not accept the date of birth other than mentioned in school leaving certificate."

Another law is referred is 2005 (106) FLR 502 in which Hon'ble Allahabad High Court laid down—Date of birth—Correct age—Serious controversy of date of birth given by workman—Assessment by CMD in the certificate is nothing but merely an opinion—Opinion evidence is weak in reference to medical test—He cannot have any advantage of date of birth given subsequently on his appointment in respondent TAFCO—No ossification test conducted—Date of birth recorded in the service record should be taken as reliable proof of age—Belated attempt to rectify it was not bona fide."

Also referred 2005(106) FLR 499 in which Hon'ble Jharkhand High Court laid down—"Date of Birth—Dispute about—When the date of birth of the petitioner-appellant was 75-1954 in the Matriculation Certificate—which was duly verified by the respondent from Bihar School Examination Board—And a settlement arrived at that the said date would be duly recorded in the service book—Proposed action on the part of the respondent-employer in issuing notice to retire the petitioner on the basis of age as determined by medical examination—Entirely unjustified—View taken by Single Judge unsustainable—Order of Single Judge set aside—Direction issued to correct the age of the petitioner in service book as per the date of birth shown in matriculation certificate—Appeal allowed."

8. Considering the above facts and circumstances, it shows that when Identity Card issued by the management the date of birth of the concerned workman has been mentioned as 13-12-1953 and in school leaving certificate and Prathama Certificate his date of birth has been mentioned as 13-12-1953, it cannot be challenged by the management on the ground that in N.E.I.S. his date of birth has been mentioned as 13-12-1942. As per J.B.C.C.I. Circular the date of birth mentioned in Form 'B' Register and also service excerpt in which the date of birth of the concerned workman is shown as 13-12-1953, it cannot be ignored and it should be accepted and this cannot be changed.

9. In the result I hold that the action of the management of Tetulmari Colliery of M/s. BCCL in superannuating Shri Karam Chand Prasad w.e.f. 31-12-2002 is not legal and justified. So, he is entitled to be re-instated in service with full back wages and other consequential benefits. The management is directed to implement the award within 30 days from the date of publication of the award in the Gazette of India.

This is my Award.

H. M. SINGH, Presiding Officer.

नई दिल्ली, 1 अगस्त, 2012

का.आ. 2685.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 सितम्बर, 2012 को

उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय 5 और 6 (धारा-76 की उप-धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबंध गुजरात राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे :

“जिला सूरत के हजीरा, कवास, मोरा एवं भाटपोर, की संपूर्ण राजस्व/नगरपालिका ग्राम पंचायत सीमाओं के अन्तर्गत आने वाले क्षेत्र। ”

[सं. एस-38013/27/2012-एस.एस. 1]
नरेश जायसवाल, अवर सचिव

New Delhi, the 1st August, 2012

S.O. 2685.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st September 2012 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI (except Sub-section of Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Gujarat namely :—

“Entries area falling in revenue/Municipal/Gram Panchayat limits of Hazira, Kawas, Mora and Bhatpore, District Surat.”

[No. S-38013/27/2012-S.S.I]
NARESH JAISWAL, Under Secy.